TITLE 105 INDIANA DEPARTMENT OF TRANSPORTATION

Proposed Rule
LSA Document #00-248

DIGEST

Amends 105 IAC 12 concerning procurement of supplies and services. Effective 30 days after filing with the secretary of state.

105 IAC 12-1-6
105 IAC 12-1-9
105 IAC 12-1-10
105 IAC 12-1-12
105 IAC 12-1-13
105 IAC 12-1-14
105 IAC 12-1-16
105 IAC 12-1-20
105 IAC 12-1-20.1
105 IAC 12-1-21
105 IAC 12-1-23
105 IAC 12-1-24
105 IAC 12-1-25
105 IAC 12-1-26
105 IAC 12-2-4
105 IAC 12-2-6
105 IAC 12-2-7
105 IAC 12-2-9
105 IAC 12-2-14
105 IAC 12-2-16
105 IAC 12-3-1
105 IAC 12-3-2
105 IAC 12-3-3
105 IAC 12-3-4
105 IAC 12-3-5
105 IAC 12-3-7
105 IAC 12-3-8
105 IAC 12-4-1
105 IAC 12-4-3
105 IAC 12-4-4
105 IAC 12-4-6

SECTION 1. 105 IAC 12-1-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-6 "Change order" defined
Authority: IC 8-23-2-6; IC 5-22-4-2
Affected: IC 5-22

Sec. 6. "Change order" means a written order that:
(1) is signed by the ~~commissioner,~~ **purchasing agent;** and
(2) directs the contractor to make changes **that the contract authorizes the purchasing agent to order** without the consent of the contractor.
(Indiana Department of Transportation; 105 IAC 12-1-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502)

SECTION 2. 105 IAC 12-1-9 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-9 "Contract modification" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 9. "Contract modification" means a written alteration:
(1) in ~~specifications,~~ **a specification,** delivery point, rate of delivery, period of performance, price, quantity, or ~~other~~ **another** provision of a contract; ~~which alteration is~~ **and**
(2) accomplished by mutual ~~approval~~ **action** of the parties to the contract.
(Indiana Department of Transportation; 105 IAC 12-1-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802)

SECTION 3. 105 IAC 12-1-10 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-10 "Contractor" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 10. "Contractor" ~~means any~~ **refers to a** person ~~having~~ **who has** a contract with the department. *(Indiana Department of Transportation; 105 IAC 12-1-10; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1502)*

SECTION 4. 105 IAC 12-1-12 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-12 "Designee" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 12. "Designee" means ~~a duly~~ **an** authorized representative of the commissioner. *(Indiana Department of Transportation; 105 IAC 12-1-12; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503)*

SECTION 5. 105 IAC 12-1-13 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-13 "Established catalog price" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 13. "Established catalog price" ~~means~~ **refers to** the price included in a catalog, price list, schedule, or other form that:
(1) is regularly maintained by the manufacturer or contractor;
(2) is either published or otherwise available for inspection by customers; and
(3) states prices at which sales are currently or were last made to a significant number of any category of buyers, or buyers constituting the general buying public, for the supplies or services involved.
(Indiana Department of Transportation; 105 IAC 12-1-13; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503)

SECTION 6. 105 IAC 12-1-14 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-14 "Invitation for bid" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 14. "Invitation ~~to~~ **for** bid" means all documents, whether attached or incorporated by reference, used for ~~the purpose of~~ soliciting bids. ~~The term, invitation to bid, includes a request for proposals.~~ *(Indiana Department of Transportation; 105 IAC 12-1-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503)*

SECTION 7. 105 IAC 12-1-16 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-16 "Person" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 16. "Person" ~~means~~ ~~any~~ **includes an association, a** business, ~~individual,~~ **a** committee, **a** corporation, ~~partnership,~~ **a fiduciary, an individual, a joint stock company, a** joint venture, ~~or other~~ **a limited liability company, a partnership, a sole proprietorship, a trust, or another legal entity,** organization or group of individuals. *(Indiana Department of Transportation; 105 IAC 12-1-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503)*

SECTION 8. 105 IAC 12-1-20 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-20 "Purchase description" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 20. **(a)** "Purchase description" means the words used in an invitation ~~to~~ **for** bid to describe the supplies or ~~service~~ **services** to be purchased. ~~and~~

(b) The term includes specifications attached to, or made a part of, the invitation ~~to~~ **for** bid. *(Indiana Department of Transportation; 105 IAC 12-1-20; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1503)*

SECTION 9. 105 IAC 12-1-20.1 IS ADDED TO READ AS FOLLOWS:

105 IAC 12-1-20.1 "Purchasing agent" defined
Authority: IC 8-23-2-6; IC 5-22-4-2
Affected: IC 5-22

Sec. 20.1. "Purchasing agent" means an individual authorized by the department to act as an agent for the department in the administration of the duties of the department. *(Indiana Department of Transportation; 105 IAC 12-1-20.1)*

SECTION 10. 105 IAC 12-1-21 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-21 "Request for proposals" or "RFP" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 21. "Request for proposals" **or "RFP"** means all documents, whether attached or incorporated by reference, used for soliciting proposals. *(Indiana Department of Transportation; 105 IAC 12-1-21; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504)*

SECTION 11. 105 IAC 12-1-23 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-23 "Responsive bidder" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 23. "Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the invitation ~~to~~ **for** bid. *(Indiana Department of Transportation; 105 IAC 12-1-23; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504)*

SECTION 12. 105 IAC 12-1-24 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-24 "Services" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 24. "Services" means the furnishing of labor, time, or effort by a ~~contractor.~~ **person not involving the delivery of specific supplies other than printed documents or other items that are merely incidental to the required performance.** *(Indiana Department of Transportation; 105 IAC 12-1-24; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504)*

SECTION 13. 105 IAC 12-1-25 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-25 "Specifications" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 25. **(a)** "Specifications" means ~~any~~ **a** description of the physical or functional characteristics of a supply or service or the nature of a supply or service. ~~and may includes~~

(b) The term includes a description of any requirements for inspecting, testing, or preparing a supply **or** service ~~or construction~~ ~~item~~ for delivery. *(Indiana Department of Transportation; 105 IAC 12-1-25; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504)*

SECTION 14. 105 IAC 12-1-26 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-1-26 "Supplies" defined
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 26. "Supplies" means ~~all personal~~ **any** property, including ~~but not limited to,~~ equipment, **goods, and** materials. ~~and goods.~~ **The term does not include an interest in real property.** *(Indiana Department of Transportation; 105 IAC 12-1-26; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504)*

SECTION 15. 105 IAC 12-2-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-4 Minority participation
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 4. The department will make good faith efforts to solicit participation of minorities on every invitation ~~to~~ **for** bid. *(Indiana Department of Transportation; 105 IAC 12-2-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1504)*

SECTION 16. 105 IAC 12-2-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-6 Bid guarantees
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 6. At the discretion of the department, a bidder may be required to submit with its bid a bid guarantee in the form of a certified check, a cashier's check, or a bid bond acquired from a surety company authorized to do business in ~~the state of~~ Indiana. If required, the amount shall be specified in the invitation ~~to~~ **for** bid. The bid guarantee of an unsuccessful bidder will be returned upon award of the contract. The bid guarantee of the successful bidder will be returned after the bidder enters into a contract with the department. *(Indiana Department of Transportation; 105 IAC 12-2-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505)*

SECTION 17. 105 IAC 12-2-7 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-7 Performance bonds
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 7. At the discretion of the department, a successful bidder may be required to submit a performance bond in the form of a certified check, a cashier's check, or **a** performance bond acquired from a surety company authorized to do business in ~~the state of~~ Indiana. If required, the amount of the performance bond and the time that it must be submitted will be specified in the invitation ~~to~~ **for** bid. Performance bonds will be returned, upon request, at the successful completion of the contract. *(Indiana Department of Transportation; 105 IAC 12-2-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505)*

SECTION 18. 105 IAC 12-2-9 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-9 Public notice
Authority: IC 8-23-2-6
Affected: IC 5-3-1; IC 5-22

Sec. 9. ~~(a)~~ The department shall give ~~public~~ notice ~~according to the following schedule:~~ **in the manner required by IC 5-3-1.**

~~(1) If the procurement is estimated to exceed fifty thousand dollars ($50,000), notice shall be published two (2) times, at least one (1) week apart, with the second publication made at least seven (7) days before the date the bids will be received.~~

~~(2) If the procurement is estimated to exceed twenty-five thousand dollars ($25,000), but not to exceed fifty thousand dollars ($50,000), notice shall be published at least one (1) time, at least seven (7) days before the date the bids will be received.~~

~~(3) If the procurement is estimated to be less than twenty-five thousand dollars ($25,000), publication of notice is not required.~~

~~(4) The department may publish additional notices at its discretion.~~

~~(b) Whenever notice is required by subsection (a), it shall be published in one (1) newspaper of general circulation in Marion County, Indiana. If any of the services or supplies being procured are for use outside Marion County, Indiana, notice also may be published in one (1) or more newspapers of general circulation in that area.~~

~~(c) If the procurement is estimated to exceed twenty-five thousand dollars ($25,000), the department shall post notices on a public bulletin board located in the department's central office in Indianapolis, Indiana.~~ *(Indiana Department of Transportation; 105 IAC 12-2-9; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1505)*

SECTION 19. 105 IAC 12-2-14 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-14 Withdrawal of bids or proposals
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 14. A bidder bearing proper authorization and identification may sign for and receive an unopened bid **or proposal** and withdraw the bid **or proposal** prior to the exact time for submission of bids **or proposals.** A bidder may modify its bid **or proposal** by withdrawing its bid **or proposal** as provided above and resubmitting a modified bid **or proposal** prior to the exact time for submission of bids **or proposals.** Neither the staff nor the facilities of the department will be available to assist a bidder desiring to make modifications. It is the bidder's responsibility to make all modifications. *(Indiana Department of Transportation; 105 IAC 12-2-14; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506)*

SECTION 20. 105 IAC 12-2-16 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-2-16 Award; cancellation; rejection
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 16. (a) The department reserves the right to accept or reject any or all bids, or any part thereof, and to award the items separately or all to one (1) bidder. A bidder bidding on an all or none basis must state so in its bid.

(b) Prior to the opening of bids, the department may cancel an invitation ~~to~~ **for** bid in whole or in part, when it is in the best interest of the department. Reasons for cancellation include, but are not limited to:

(1) the department no longer requires the supplies or services;

(2) the department no longer can reasonably expect to fund the procurement; or

(3) proposed amendments to the invitation ~~to~~ **for** bid would be of such magnitude that a new invitation ~~to~~ **for** bid is desirable.

(c) After the opening of bids, but prior to award of a contract, the department may reject all bids, in whole or in part, when it is in the best interest of the department. Reasons for rejection include, but are not limited to:

(1) the department no longer requires the supplies or services;

(2) ambiguous or otherwise inadequate specifications were part of the invitation ~~to~~ **for** bid;

(3) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(4) all bids received contain unreasonable prices; or

(5) there is reason to believe that the bids or proposals may not have been independently prepared.

(d) When the department cancels an invitation ~~to~~ for bid, the department will send notice to each person who submitted a bid, stating the reason for ~~the~~ cancellation. **The reason for cancellation shall be made part of the procurement file and shall be available for public inspection.**

(e) When two (2) or more bids are equal, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three (3) persons, and the contract file shall contain the names and addresses of the witnesses. *(Indiana Department of Transportation; 105 IAC 12-2-16; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1506)*

SECTION 21. 105 IAC 12-3-1 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-1 Purchases less than $2,500

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 1. (a) A procurement with an estimated cost not exceeding ~~five~~ **two thousand five** hundred dollars ~~($500)~~ **($2,500)** may be made under the procedure outlined in this section.

(b) Bids shall be invited from at least one (1) person known to deal in the supplies or services to be procured.

(c) The purchase description and date bids are due shall be communicated to the person invited to bid. Means of communication may include mail, telephone, **electronic mail,** or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If a satisfactory bid is received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. *(Indiana Department of Transportation; 105 IAC 12-3-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2802; errata filed Sep 14, 1994, 2:50 p.m.: 18 IR 268)*

SECTION 22. 105 IAC 12-3-2 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-2 Purchases less than $75,000

Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 2. (a) A procurement with an estimated cost not exceeding ~~five~~ **seventy-five** thousand dollars ~~($5,000)~~ **($75,000)** may be made under the procedure outlined in this section.

(b) ~~Where practicable,~~ Bids shall be invited from at least three (3) persons known to deal in the supplies or services to be procured.

(c) The purchase description and the date bids are due shall be communicated to the persons invited to bid. Means of communication may include mail, telephone, **electronic mail,** or facsimile machine.

(d) The department may consider an advertised price in a catalog, newspaper, advertisement, radio commercial, television commercial, or other media communication to be a bid received by the department. The department must know of the advertised price at the time bids are due.

(e) If satisfactory bids are received, a contract shall be awarded to the lowest responsive and responsible bidder.

(f) If no responsive bid is received from a responsible bidder, the department reserves the right to repeat the process described in this section. *(Indiana Department of Transportation; 105 IAC 12-3-2; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803)*

SECTION 23. 105 IAC 12-3-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-4 Competitive sealed bids

Authority: IC 8-23-2-6
Affected: IC 5-22-18-2

Sec. 4. (a) A contract for supplies or services may be awarded under the procedure outlined in this section regardless of **the** estimated dollar value.

(b) An invitation ~~to~~ **for** bid under this section shall be issued to potential bidders and must include the following:

(1) A purchase description.

(2) All contractual terms and conditions ~~applicable~~ **that apply** to the ~~procurement~~ **purchase.**

(3) A statement of the evaluation criteria ~~to~~ **that will** be used, including ~~criteria such as~~ **any of the following:**

(A) Inspection.

(B) Testing.

(C) Quality.

(D) Workmanship.

(E) Delivery. ~~and~~

(F) Suitability for a particular purpose.

(4) The time, date, and place ~~for the submission of bids and~~ for ~~the~~ opening of bids.

(5) A statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility that may be imposed in accordance with rules or policies of the governmental body.

(6) A statement concerning the conditions under which a bid may be canceled or rejected in whole or in part as specified under IC 5-22-18-2.

(c) Bids shall be publicly opened at the time and place designated in the invitation ~~to~~ **for** bid in the presence of one (1) or more witnesses.

(d) A contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder. *(Indiana Department of Transportation; 105 IAC 12-3-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1507)*

SECTION 24. 105 IAC 12-3-5 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-5 Competitive sealed proposal or request for proposal

Authority: IC 8-23-2-6; IC 5-22-4-2
Affected: IC 5-3-1; IC 5-22

Sec. 5. (a) ~~The commissioner must make~~ **When a purchasing agent makes** a written determination ~~approving~~ **that** the ~~procurement~~ **use** of ~~supplies and services under this section.~~ **competitive sealed bidding is either not practicable or not advantageous to the governmental body, the purchasing agent may award a contract using the procedure provided by this section instead of competitive sealed bidding.**

(b) ~~Proposals~~ **The purchasing agent** shall ~~be solicited~~ **solicit proposals** through a request for proposals, which must include the ~~criteria to be used in evaluating the proposals.~~ **following:**

(1) A statement concerning the relative importance of price and the other evaluation factors.

(2) A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

(c) Public notice shall be given in the manner required by IC 5-3-1.

~~(c)~~ **(d)** Proposals shall be opened at the date and time specified in the request for proposals.

~~(d)~~ **(e)** The department may conduct discussions with persons submitting proposals for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Persons submitting proposals must be accorded fair and equal treatment with respect to the opportunity for discussion and revision of proposals. In conducting discussions, the department shall not disclose information derived from proposals submitted by competing persons.

~~(e)~~ **(f)** After identification of the responsible offer or whose proposal appears to be the most advantageous to the department, the department will enter into contract preparation activities with the bidder. If at any time the contract preparation activities are judged to be ineffective, the department may cease all activities with that bidder and begin contract preparation activities with the next highest ranked bidder, and the process may continue until a contract is executed. The department reserves the right to cease all contract preparation activities at any time and ~~the~~ **to** reject all proposals, if such action is determined to be in the best interest of the department. *(Indiana Department of Transportation; 105 IAC 12-3-5; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508)*

SECTION 25. 105 IAC 12-3-7 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-7 Open-end contracts

Authority: 8-23-2-6
Affected: 5-22

Sec. 7. (a) Procurement of various types of aggregates and bituminous materials may be awarded under the procedure outlined in this section.

(b) The department will solicit unit prices for the various types of aggregates and bituminous materials in the invitation ~~to~~ **for** bid. Prices submitted in bids shall be binding upon the bidder for the time period specified in the invitation ~~to~~ **for** bid.

(c) A procurement of a specified quantity of material will be awarded to the bidder whose relative cost per unit is the lowest, using the following formula:

$$C = P + (2 \times D \times M)$$

Where: P = Price quoted per unit.

D = Haul distance from supplier to the department worksite.

M = Cost per mile as determined by the department.

C = Relative cost per unit.

(d) The department may continue to procure materials from the bids submitted for the period specified in the invitation ~~to~~ **for** bid. *(Indiana Department of Transportation; 105 IAC 12-3-7; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508)*

SECTION 26. 105 IAC 12-3-8 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-3-8 Special procurements
Authority: IC 8-23-2-6; IC 5-22-4-2
Affected: IC 5-22

Sec. 8. (a) ~~The department may make a special procurement~~ **Notwithstanding any other provision of this article, a purchasing agent may make a purchase without soliciting bids or proposals** under any of the following circumstances:

(1) When there exists a unique opportunity to obtain supplies or services at a substantial savings to the department.

(2) When the market structure requires the department to inspect and bid on the supplies to be procured.

(3) **When only one (1) source meets the department's reasonable requirements** for the procurement of data processing contracts or license agreements ~~for.~~ **involving:**

(A) software programs; or

(B) supplies or services. ~~when only one (1) source meets the department's reasonable requirements.~~

(4) When the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only one (1) source meets the department's reasonable requirements.

(5) When there exists, under emergency conditions, a threat to public health, welfare, or safety.

(6) When the department has solicited for a procurement ~~under another section of this chapter~~ and has not received a responsive bid from a responsible bidder.

(7) When procurement of the required supplies or services ~~under another section of this chapter~~ would seriously impair the functioning of the department.

(8) For the evaluation of supplies or a system containing supplies to obtain functional information or comparative data or for any other purpose that in the judgment of the commissioner may advance the long term competitive position of the state.

(9) For the procurement of copyrighted materials to be used, provided, or distributed by the department.

(b) A special procurement must be made with such competition as is practicable under the circumstances.

(c) **A purchasing agent shall maintain the contract records for a special purchase in a separate file. The contract file shall include** a written determination of ~~the~~ **a** basis for the special ~~procurement~~ **purchase** and ~~for~~ the selection of the particular ~~contractor must be included in the~~ contract. ~~file.~~

(d) A special procurement must be approved by the commissioner. *(Indiana Department of Transportation; 105 IAC 12-3-8; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1508)*

SECTION 27. 105 IAC 12-4-1 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-1 Price adjustments
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 1. The department may enter into a contract ~~which provide~~ **that provides** for price adjustments under the conditions defined in the invitation ~~to~~ **for** bid. *(Indiana Department of Transportation; 105 IAC 12-4-1; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509)*

SECTION 28. 105 IAC 12-4-3 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-3 Equipment rental or lease with option to purchase
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 3. A contract for rental or lease may contain an option to purchase under the following circumstances:

(1) Exercise of the option shall be at the sole discretion of the commissioner.

(2) The option must be part of the invitation ~~to~~ **for** bid. *(Indiana Department of Transportation; 105 IAC 12-4-3; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509)*

SECTION 29. 105 IAC 12-4-4 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-4 Additions
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 4. (a) If a bidder inserts contract terms or bids on items not listed in the invitation ~~to~~ **for** bid, the department will treat the additional material as a proposal for addition to the contract and may:

(1) find the bidder to be nonresponsive;

(2) permit the bidder to withdraw the proposed additions to the contract; or

(3) accept any of the proposed additions to the contract.

(b) The department will not accept proposed additions to the contract that are prejudicial to the interest of the department or fair competition. The department's decision to permit a change will be made in writing. *(Indiana Department of Transportation; 105 IAC 12-4-4; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1509)*

SECTION 30. 105 IAC 12-4-6 IS AMENDED TO READ AS FOLLOWS:

105 IAC 12-4-6 Option to renew
Authority: IC 8-23-2-6
Affected: IC 5-22

Sec. 6. A contract may contain an option to renew or extension of its terms, for a specified period of time, under the following circumstances:

(1) Exercise of the option is at the discretion of the department.

(2) The provision must be included in the ~~invitation to bid.~~ **solicitation.**

(3) A contract for supplies ~~or services~~ may be entered into for a period not to exceed four (4) years.

(4) Performance obligations for succeeding fiscal years shall be subject to availability of funds for each year.

(5) The invitation ~~to~~ **for** bid and contract specify the exact payment terms.

(Indiana Department of Transportation; 105 IAC 12-4-6; filed Jan 15, 1993, 1:00 p.m.: 16 IR 1510; filed Jul 28, 1994, 4:00 p.m.: 17 IR 2803)

SECTION 31. 105 IAC 12-3-3 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 23, 2001 at 10:00 a.m., at the Indiana Government Center-North, 100 North Senate Avenue, Room 730, Indianapolis, Indiana the Indiana Department of Transportation will hold a public hearing on proposed amendments concerning the departments procurement of supplies and services. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Room 730 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Cristine M. Klika
Commissioner
Indiana Department of Transportation

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #01-91

DIGEST

Adds 312 IAC 23-3-5 to authorize modification of a previously approved certification of the Indiana state historic rehabilitation tax credit. The division of historic preservation and archaeology may seek a modification based upon an allegation of misrepresentation, fraud, or similar good cause through a complaint filed with the natural resources commission. The division may modify the credit, if caused by a statutory change subsequent to certification, upon the issuance of an administrative letter. Effective 30 days after filing with the secretary of state.

312 IAC 23-3-5

SECTION 1. 312 IAC 23-3-5 IS ADDED TO READ AS FOLLOWS:

312 IAC 23-3-5 Modification of tax credits
Authority: IC 6-3.1-16-15; IC 14-10-2-5; IC 14-21-1-31
Affected: IC 4-21.5; IC 6-3.1-16-14

Sec. 5. (a) The division may, for misrepresentation, fraud, or similar good cause, file a complaint with the commission under IC 4-21.5 to modify or terminate a tax credit previously approved under this rule.

(b) The division shall, by administrative letter, modify a tax credit certification to conform the credit to a subsequent statutory change to IC 6-3.1 (or the amount of the annual credit authorized by IC 6-3.1). A modification under this subsection may accelerate or defer when a credit can be taken but shall not modify the sequence of the queue referenced in section 4(g) of this rule. *(Natural Resources Commission; 312 IAC 23-3-5)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 27, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Room W272, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on a proposed new rule to authorize modification of a previously approved certification of the Indiana state historic rehabilitation tax credit. The division of historic preservation and archaeology may seek a modification based upon an allegation of misrepresentation, fraud, or similar good cause through a complaint filed with the natural resources commission. The division may modify the credit, if caused by a statutory change subsequent to certification, upon the issuance of an administrative letter. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #01-102

DIGEST

Amends 312 IAC 9 that governs hunting deer by firearms, hunting deer by bow and arrows, hunting of deer in confined

areas, turkey, brown trout, largemouth bass, walleye, channel catfish, fish sorting and a prohibition on waste, charter fishing, yellow perch, ice fishing, whooping cranes, sandhill cranes, aquaculture permit, and the meaning of "sale" as it applies to native reptiles and amphibians. Makes numerous technical corrections. Effective 30 days after filing with the secretary of state.

312 IAC 9-3-2
312 IAC 9-3-3
312 IAC 9-3-4
312 IAC 9-3-5
312 IAC 9-3-7
312 IAC 9-3-8
312 IAC 9-4-11
312 IAC 9-4-14
312 IAC 9-5-7
312 IAC 9-6-3
312 IAC 9-6-6
312 IAC 9-7-2
312 IAC 9-7-3
312 IAC 9-7-6
312 IAC 9-7-12
312 IAC 9-7-13
312 IAC 9-7-17
312 IAC 9-7-18
312 IAC 9-10-17

SECTION 1. 312 IAC 9-3-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-2 General requirements for deer; exemptions; tagging; tree blinds; maximum taking of antlered deer in a calendar year

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 2. (a) This section and sections 3 through 10 of this rule govern the hunting, transportation, and disposal of deer.

(b) Species of deer other than white-tailed deer (Odocoileus virginianus) are exempted from this section and sections 3 through 9 of this rule. A person who claims the exemption provided under this subsection must prove the deer is other than a white-tailed deer.

(c) The licenses identified by sections 3 through 8 of this rule are nonexclusive. An individual may apply for one (1) or more of these licenses.

(d) Before September 1, 2007, a person must not take more than one (1) antlered deer during the seasons for an annual deer license.

~~(d)~~ **(e)** The use or aid of a food product that is transported and placed for consumption, salt, mineral blocks, prepared solid or liquid intended for ingestion (herein called bait), snares, dogs, or other domesticated animals to take deer is prohibited. A person must not hunt by the aid of bait or on or over a baited area. An area is considered baited for ten (10) days after the removal of the bait or the baited soil. Hunting an orchard or another area which may be attractive to deer as the result of normal agricultural activity is not prohibited. The use of manufactured scents and lures or similar chemical or natural attractants is not prohibited.

~~(e)~~ **(f)** Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt deer unless the person possesses a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a deer license or tag issued to another person.

~~(f)~~ **(g)** The temporary transportation tag described in subsection ~~(e)~~ **(f)** must, immediately upon taking a deer, be notched as to the sex of the deer and the month and day of the kill. A tag which is notched other than three (3) times is void. A person must not tag a deer other than with a tag issued to the person who took the deer. A deer leg must be tagged before leaving the field. A deer which is in the field is not required to be tagged if the person who kills the deer maintains immediate custody of, and constant visual contact with, the deer carcass.

~~(g)~~ **(h)** A person who takes a deer must deliver the deer carcass to an official checking station for registration on the occurrence of the earlier of one (1) of the following:
(1) Within twenty-four (24) hours of taking of the deer.
(2) Before the deer is removed from this state.

~~(h)~~ **(i)** After the checking station operator records the permanent seal number on the log and collects the upper portion of the license, where applicable, along with the temporary transportation tag, the hunter is provided with that seal. The seal must be affixed by the hunter and ~~locked between a tendon and bone~~ **sealed** to prevent its removal (without ~~severing a tendon and must remain affixed until~~ **cutting the seal or the body part to which it is affixed), before** processing of the deer begins, **by affixing the seal:**
(1) between a tendon and bone;
(2) through a section of skin or flesh; or
(3) around a branched antler.

(j) The checking station operator ~~shall~~ **must** accurately and legibly complete all forms provided by the department and must make those forms available to department personnel upon request.

~~(i)~~ **(k)** An individual authorized to act under this subsection must attach a paper to a deer carcass which states the name and address of the individual and the date and sex of the deer taken. The requirements of subsections ~~(e)~~ **(f)** through ~~(f)~~ **(g)** also apply except to the extent those subsections identify the physical characteristics of a tag. The individuals authorized to act under this subsection are as follows:
(1) A lifetime license holder.
(2) A youth license holder.
(3) For a deer taken on a landowner's land, each of the following:
(A) The resident landowner.
(B) The spouse of the resident landowner.

(C) A child of the resident landowner who is living with the landowner.

(4) For a deer taken on farmland leased from another person, each of the following:

(A) The resident lessee who farms the land.

(B) The spouse of the resident lessee.

(C) A child of the resident lessee who is living with the lessee.

(5) An Indiana serviceman or servicewoman who is hunting under IC 14-22-11-11.

~~(j)~~ **(l)** A person must not erect, place, or hunt from a permanent tree blind on state-owned lands. A tree blind placed on state-owned or state-leased lands, U.S. Forest Service lands, ~~or lands of~~ the Muscatatuck National Wildlife Refuge, **or the Big Oaks National Wildlife Refuge** must be portable and may be left overnight only between September 1 and January 10. A fastener used in conjunction with a tree blind and a tree or pole climber which penetrates a tree more than one-half (½) inch is prohibited. Each portable tree blind must be legibly marked with the name, address, and telephone number of the owner of the tree blind.

~~(k)~~ **(m)** The head of a deer must remain attached to the carcass until the ~~metal~~ tag is attached and locked at the deer checking station.

~~(l)~~ **(n)** The use of infrared sensors to locate or take deer is prohibited. It is unlawful to hunt or to retrieve deer with the aid of an infrared detector.

~~(m)~~ **(o)** Notwithstanding subsection ~~(d),~~ **(e),** dogs may be used only while on a leash to track or trail wounded deer.

~~(n)~~ **(p)** Notwithstanding subsection ~~(d),~~ **(e),** donkeys, mules, and horses may be used for transportation to and from a hunt but may not be used while hunting. *(Natural Resources Commission; 312 IAC 9-3-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2702)*

SECTION 2. 312 IAC 9-3-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-3 Hunting deer by firearms

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1; IC 35-47-2

Sec. 3. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to hunt deer by firearms under IC 14-22-12-1(12), IC 14-22-12-1(13), IC 14-22-12-1(15), or IC 14-22-12-1(16); or

(2) hunting by the use of firearms under IC 14-22-11-1.

(b) The season for hunting deer with firearms is as follows:

(1) The firearms season using shotgun, shotgun with rifled barrel, handgun, muzzle loading gun, or muzzle loading handgun is from the first Saturday after November 11 and continuing for an additional fifteen (15) days.

(2) The seasonal limit for hunting deer under this subsection is one (1) antlered deer.

(c) In addition to the season established under subsection (b), the season for using a muzzle loading gun or muzzle loading handgun only extends from the first Saturday after the firearms season established under subsection (b) and continues for fifteen (15) additional days. The seasonal limit for hunting deer under this extended season is one (1) deer of either sex. ~~However, if an individual has taken an antlered deer in the same year during the season established under subsection (b), the individual must not take an antlered deer under this subsection.~~

(d) A person must not hunt deer except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

(e) A person must not hunt deer unless that person wears hunter orange.

(f) Bow and arrows must not be possessed by a person while hunting under this section.

(g) The following requirements apply to the use of firearms under this section:

(1) A shotgun must have a gauge 10, 12, 16, ~~or~~ 20, **or .410 bore** loaded with a single projectile. A shotgun may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine.

(2) A handgun must:

(A) conform to the requirements of IC 35-47-2;

(B) have a barrel at least four (4) inches long; and

(C) fire a bullet of.243 inch diameter or larger.

All 38 special ammunition is prohibited. The handgun cartridge case, without bullet, must be at least one and sixteen-hundredths (1.16) inches long. A handgun must not be concealed. Full metal jacketed bullets are unlawful. A handgun may be possessed in the field outside lawful shooting hours only if there are no shells in the chamber or magazine. All 25/20, 32/20, 30 carbine, and 38 special ammunition is prohibited.

(3) A muzzle loading gun must be.44 caliber or larger, loaded with a single ball-shaped or elongated bullet of at least.44 caliber. A muzzle loading handgun must be single shot,.50 caliber or larger, loaded with bullets at least.44 caliber and have a barrel at least twelve (12) inches long. The length of a muzzle loading handgun barrel is determined by measuring from the base of the breech plug, excluding tangs and other projections, to the end of the barrel, including the muzzle crown. A muzzle loading firearm must be loaded from the muzzle. A muzzle loading firearm may be possessed in the field outside lawful shooting hours only if:

(A) for percussion firearms, the cap or primer is removed from the nipple or primer adapter; or

(B) for flintlock firearms, the pan is not primed.

(4) Over-and-under combination rifle-shotguns are prohibited.

(Natural Resources Commission; 312 IAC 9-3-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 13, 1997, 12:09 p.m.: 21 IR 1272)

SECTION 3. 312 IAC 9-3-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-4 Hunting deer by bow and arrows

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 4. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to hunt deer with bow and arrows under IC 14-22-12-1(14) or IC 14-22-12-1(17) and is supplemental to section 2 of this rule; or

(2) hunting by the use of bow and arrows under IC 14-22-11-1.

(b) The season for hunting deer with bow and arrows during the early bow season is from October 1 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

(c) The urban deer season is from September 15 through the firearms season (set forth in section 3(b) of this rule) and during the late bow season from the first Saturday after the firearms season through the first Sunday in January.

~~(c)~~ **(d)** The seasonal limit for hunting under this section is one (1) deer of either sex. ~~In addition, the following restrictions apply:~~

~~(1) A person who has taken an antlered deer under section 5 of this rule must not take an antlered deer under this section.~~

~~(2)~~ A person must not take an antlered deer by means of a crossbow.

~~(d)~~ **(e)** A person must not hunt deer under this section except from one-half (½) hour before sunrise to one-half (½) hour after sunset.

~~(e)~~ **(f)** A person must not hunt deer under this section unless that person wears hunter orange. However, this subsection does not apply before the commencement of the firearms season set forth in section 3(b) of this rule and after the muzzle loading gun season set forth in section 3(c) of this rule.

~~(f)~~ **(g)** A person must not hunt under this section unless that person possesses only one (1) bow. A firearm must not be possessed by ~~a~~ **the** person hunting under this section.

~~(g)~~ **(h)** The following requirements apply to the use of archery equipment under this section:

(1) No person shall use a long bow or compound bow of less than thirty-five (35) pounds pull.

(2) Arrows must be equipped with metal or metal-edged (or flint, chert, **or** obsidian napped) broadheads.

(3) Poisoned or explosive arrows are unlawful.

(4) Bows drawn, held, or released other than by hand or hand-held releases are unlawful.

(5) A long bow or compound bow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

(6) No portion of the bow's riser (handle) or any track, trough, channel, arrow rest, or other device that attaches to the bow's riser shall contact, support, or guide the arrow from a point rearward of the bow's brace height.

~~(h)~~ **(i)** Notwithstanding subsection ~~(g),~~ **(h),** a person may use a crossbow to take antlerless deer during the late bow season from the first Saturday after the firearms season through the first Sunday in January if the following restrictions are met:

(1) No person shall use a crossbow of less than one hundred twenty-five (125) pounds pull.

(2) No person shall use a crossbow that does not have a mechanical safety.

(3) A crossbow may be possessed in the field before and after lawful shooting hours only if the nock of the arrow is not placed on the bow string.

~~(i)~~ **(j)** As used in this rule, "crossbow" means a device for propelling an arrow by means of traverse limbs mounted on a stock and a string and having a working safety. The crossbow may be drawn, held, and released by a mechanical device. *(Natural Resources Commission; 312 IAC 9-3-4; filed May 12, 1997, 10:00 a.m.: 20 IR 2703; filed Nov 5, 1997, 3:25 p.m.: 21 IR 930)*

SECTION 4. 312 IAC 9-3-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-5 Hunting deer with bow and arrows by authority of an extra deer license

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 5. (a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:

(1) issued a license to take an extra deer under IC 14-22-12-1(18) or IC 14-22-12-1(19) by means of bow and arrows; or

(2) hunting under IC 14-22-11-1 with an extra deer license by means of bow and arrows.

(b) Except as specified in subsection (d), the statewide seasonal limit for hunting under this section is one (1) deer of either sex. ~~In addition, the following restrictions apply:~~

~~(1) A person who has taken an antlered deer under section 4 of this rule must not take an antlered deer under this section.~~

~~(2)~~ A person must not take an antlered deer by means of a crossbow.

(c) The restrictions contained in section 4(b) and ~~4(d)~~ **4(e)** through ~~4(h)~~ **4(i)** of this rule also apply to a license issued under this section.

(d) The seasonal limit for hunting deer in an urban deer zone is ~~one (1) antlerless deer for each of two (2) extra deer licenses in addition to the statewide extra deer limit.~~ **four (4) deer of which only one (1) may be antlered. A person must possess a valid extra deer license for each deer taken. A deer taken under this subsection does not count against a bag limit for deer set elsewhere in this rule.**

(e) The following areas have been designated as urban deer zones:

(1) The Indianapolis urban deer zone includes all of Marion County, that portion of Hendricks County east of State Highway 267, the southeast portion of Boone County as bounded by State Highway 267, Interstate Highway 65, State Highway 32, and that portion of Hamilton County south of State Highway 32.

(2) The Fort Wayne urban deer zone includes that portion of Allen County lying within the bounds of Interstate Highway 69 and State Highway 469.

(3) The Evansville urban deer zone includes all of Vanderburgh County.

(4) The Lafayette urban deer zone includes the portion of Tippecanoe County north of State Highway 28.

(5) The Gary urban deer zone includes that portion of Lake County north of U.S. Highway 30.

(6) The Crown Point urban deer zone includes that portion of Lake County within the corporate limits of Crown Point.

(7) The Chesterton urban deer zone includes the portion of Porter County north of U.S. Highway 94.

(8) The Michigan City urban deer zone includes that portion of LaPorte County north of U.S. Highway 94.

(9) The Madison urban deer zone includes that portion of Jefferson County bounded on the east by U.S. Highway 421 as well as bounded on the north and west by State Highway 62 and on the south by State Highway 56.

(Natural Resources Commission; 312 IAC 9-3-5; filed May 12, 1997, 10:00 a.m.: 20 IR 2704; filed Nov 5, 1997, 3:25 p.m.: 21 IR 931; filed May 28, 1998, 5:14 p.m.: 21 IR 3713)

SECTION 5. 312 IAC 9-3-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-7 Hunting deer in a designated county by authority of an extra deer license

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-12-1

Sec. 7. ~~(a) This section is supplemental to section 2 of this rule and governs the activities of an individual who is either:~~

~~(1) issued a license to take an extra deer under IC 14-22-12-1(18) or IC 14-22-12-1(19); or~~

~~(2) hunting under IC 14-22-11-1 with the use of an extra deer license under IC 14-22-12-1(18) or IC 14-22-12-1(19).~~

~~(b) No person may take an antlerless deer under this section unless the person possesses an antlerless deer license issued by the division under this section.~~

~~(c) Except as provided in subsection (j), the season for hunting deer under this section is as follows:~~

~~(1) From the first Saturday after November 11 and continuing for an additional fifteen (15) days with bow and arrows or firearms.~~

~~(2) From the first Saturday after the day on which the period in subdivision (1) terminates and continuing for an additional fifteen (15) days with a muzzle loading gun.~~

~~(3) From the first Saturday after the day on which the period in subdivision (1) terminates and continuing through the first Sunday in January with bow and arrows.~~

~~(d) The seasonal limit for hunting under this section is one (1) antlerless deer for each license issued under this section.~~

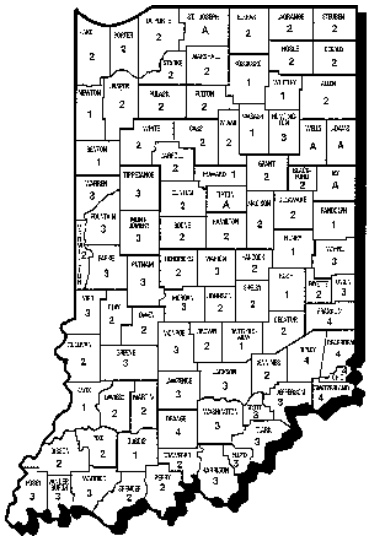
~~(e) A person who hunts by authority of this section must obtain an extra deer license for each deer. Section 2 of this rule, which governs the use of tags, applies to extra deer tags.~~

~~(f) A person who hunts under the authority of this section may use bow and arrows or any firearm which may otherwise be lawfully used to take deer under this rule.~~

~~(g) Sections 3(d) through 3(g) and 4(d) through 4(g) of this rule also apply to a license issued under this section.~~

~~(h) The seasonal bag limit for taking antlerless deer under this section is four (4) from Indiana.~~

~~(i) Except as provided in subsection (j), the county bag limit must not be exceeded from each county as set forth in the following map:~~



~~(j) For a county marked on the map in subsection (i) with the letter "A", the county bag limit is one (1) antlerless deer. The season for a county marked with the letter "A" is as follows:~~

~~(1) From the second Thursday after November 16 and~~

~~continuing for an additional three (3) days with bow and arrows or with firearms.~~

~~(2) From the first Saturday after the day on which the period in subdivision (1) terminates and continuing for an additional fifteen (15) days with a muzzle loading gun.~~

~~(3) From the first Saturday after the day on which the period in subdivision (1) terminates and continuing through the first Sunday in January with bow and arrows.~~

Hunting deer in a designated county, by authority of an extra deer license, shall be addressed on an annual basis by an emergency rule approved by the director. *(Natural Resources Commission; 312 IAC 9-3-7; filed May 12, 1997, 10:00 a.m.: 20 IR 2705; filed Aug 15, 1997, 8:36 a.m.: 21 IR 29)*

SECTION 6. 312 IAC 9-3-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-3-8 Hunting deer on designated military reserves, Big Oaks National Wildlife Reserve, and Muscatatuck National Wildlife Refuge; regular and extra deer hunting licenses

Authority: IC 14-22-2-6
Affected: IC 14-22-12-1

Sec. 8. (a) This section governs the activities of an individual who is hunting deer on each of the following military reserves and wildlife refuges:

(1) Naval Weapons Support Center-Crane.

(2) ~~Jefferson Proving Ground.~~ **Big Oaks National Wildlife Refuge.**

(3) Atterbury Reserve Forces Training Area.

(4) Indiana Army Ammunition Plant (Charlestown).

(5) Newport Army Ammunition Plant.

(6) Muscatatuck National Wildlife Refuge.

(7) Leiber State Recreation Area (holders of handicap permits under 312 IAC 9-10-10 only).

(b) The season for hunting deer under this section by firearms is from November 1 through December 31.

(c) The season for hunting deer under this section by bow and arrows is from October 1 through December 31.

(d) Except as provided under subsections (b) through (c), a person who hunts by the authority of a firearms license issued under section 3 of this rule or bow and arrows license under section 4 or 5 of this rule is also subject to those sections.

(e) An individual may enter a drawing to hunt deer on the military reserves or on **Big Oaks National Wildlife Reserve or** Muscatatuck National Wildlife Refuge. If selected in the drawing, that individual may apply for:

(1) an extra firearms military or refuge deer license;

(2) an extra deer muzzle loader military or refuge license; or

(3) an extra deer archery military or refuge license;

to hunt during the seasons established under subsections (b) through (c).

(f) Except as provided in subsection (g), the seasonal bag limit for hunting under this section is one (1) deer of either sex for each license, whether that license is issued under subsection (d) or (e). An antlered deer taken under this section is exempted from the limitations placed on the taking of antlered deer set forth in this rule.

(g) In addition to the other licenses authorized by this section, the division may issue an extra deer license under this subsection. This extra deer license authorizes the taking by bow and arrows of a deer of either sex from a site listed in subsection (a). This subsection is governed by IC 14-22-12-1(18) and IC 14-22-12-1(19).

(h) Section 2 of this rule, which governs the use of tags, generally, also applies to extra deer tags under this section. *(Natural Resources Commission; 312 IAC 9-3-8; filed May 12, 1997, 10:00 a.m.: 20 IR 2705)*

SECTION 7. 312 IAC 9-4-11 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-11 Wild turkeys

Authority: IC 14-22-2-6
Affected: IC 14-22-11-1; IC 14-22-11-11

Sec. 11. (a) Except as provided in subsection (b), the season for hunting and possessing wild turkeys is from the first Wednesday after April 20 and continuing for an additional eighteen (18) consecutive days.

(b) The season for hunting and possessing wild turkeys on Camp Atterbury and the ~~Jefferson Proving Grounds~~ **Big Oaks National Wildlife Refuge** will be determined on an annual basis by the director.

(c) The limit for taking and possessing is one (1):

(1) bearded wild turkey; or

(2) male wild turkey.

(d) A person must not hunt wild turkeys except between one-half (½) hour before sunrise and ~~noon Eastern Standard Time (11 a.m. Central Standard Time). A turkey hunter must leave the field by 1 p.m. Eastern Standard Time (noon Central Standard Time).~~ **sunset.**

(e) A person must not take a wild turkey except with the use of one (1) of the following:

(1) A 10, 12, 16, or 20 gauge shotgun loaded only with shot of 4, 5, 6, **7,** or 7½.

(2) A muzzle loading shotgun loaded only with shot of 4, 5, 6, **7,** or 7½.

(3) Bow and arrows.

(f) A person must not hunt wild turkeys ~~except~~ in the following counties:

(1) ~~Benton.~~ **Rush.**

(2) ~~Boone.~~ **Shelby.**

~~(3) Brown.~~

~~(4) Bartholomew.~~

~~(5) Carroll (either west of State Road 75 or north of State Road 18).~~

~~(6) Cass.~~

~~(7) Clark.~~

~~(8) Clay.~~

~~(9) Clinton.~~

~~(10) Crawford.~~

~~(11) Daviess.~~

~~(12) Dearborn.~~

~~(13) Decatur.~~

~~(14) Dekalb (North of U.S. 6).~~

~~(15) Dubois.~~

~~(16) Fayette.~~

~~(17) Floyd.~~

~~(18) Fountain.~~

~~(19) Franklin.~~

~~(20) Fulton.~~

~~(21) Gibson.~~

~~(22) Grant.~~

~~(23) Greene.~~

~~(24) Harrison.~~

~~(25) Hendricks.~~

~~(26) Huntington (either west of State Road 5 or south of State Road 124).~~

~~(27) Jackson.~~

~~(28) Jasper.~~

~~(29) Jefferson.~~

~~(30) Jennings.~~

~~(31) Johnson.~~

~~(32) Knox.~~

~~(33) Kosciusko (west of State Road 15).~~

~~(34) LaGrange (east of State Road 9).~~

~~(35) Lake.~~

~~(36) LaPorte (either south of U.S. 30 or east of State Road 39).~~

~~(37) Lawrence.~~

~~(38) Marshall.~~

~~(39) Martin.~~

~~(40) Miami.~~

~~(41) Monroe.~~

~~(42) Montgomery.~~

~~(43) Morgan.~~

~~(44) Newton.~~

~~(45) Noble (both east of State Road 9 and north of U.S. 6).~~

~~(46) Ohio.~~

~~(47) Orange.~~

~~(48) Owen.~~

~~(49) Parke.~~

~~(50) Perry.~~

~~(51) Pike.~~

~~(52) Porter (south of State Road 8).~~

~~(53) Posey.~~

~~(54) Pulaski.~~

~~(55) Putnam.~~

~~(56) Ripley.~~

~~(57) St. Joseph (either west of State Road 23 or south of U.S. 6).~~

~~(58) Scott.~~

~~(59) Spencer.~~

~~(60) Starke.~~

~~(61) Steuben.~~

~~(62) Sullivan.~~

~~(63) Switzerland.~~

~~(64) Tippecanoe.~~

~~(65) Union.~~

~~(66) Vanderburgh.~~

~~(67) Vermillion.~~

~~(68) Vigo.~~

~~(69) Wabash.~~

~~(70) Warren.~~

~~(71) Warrick.~~

~~(72) Washington.~~

~~(73) Wayne.~~

~~(74) White.~~

(g) The use of a dog, another domesticated animal, a live decoy, a recorded call, **an electronically powered or controlled decoy,** or bait to take a wild turkey is prohibited. An area is considered baited for ten (10) days after the removal of the bait, but an area is not considered to be baited which is attractive to wild turkeys resulting from:

(1) normal agricultural practices; or

(2) the use of a manufactured scent, a lure, or a chemical attractant.

(h) A person must not possess a handgun while hunting wild turkeys.

(i) Except as provided under IC 14-22-11-1 and IC 14-22-11-11, a person must not hunt wild turkeys unless that person possesses a completed and signed license bearing the person's name. The license must be accompanied by a temporary transportation tag bearing the license number and the year of issuance. A person must not hunt with a wild turkey license or tag issued to another person.

(j) The temporary transportation tag described in subsection (i) must, immediately after taking a wild turkey, be notched as to the month and day of the taking **and attached to a leg of the turkey directly above the spur.** A tag which is notched more than twice is void. The temporary transportation tag must be attached to a leg of the wild turkey directly above the spur. The turkey must be transported to an official turkey checking station within twenty-four (24) hours of taking for registration. After the checking station operator records the permanent seal number on the log, the hunter is provided with that seal. The hunter

shall immediately and firmly affix the seal to the leg of the turkey directly above the temporary transportation tag. The seal must remain affixed until processing of the turkey begins. The official turkey checking station operator shall accurately and legibly complete all forms provided by the department and make those forms available to department personnel on request.

(k) Each of the following individuals must tag a turkey carcass **immediately after taking** with a paper ~~which~~ **that** states the name and address of the individual and the date the turkey was taken:

(1) A lifetime license holder.
(2) A youth license holder.
(3) For a wild turkey taken on a landowner's land, each of the following:
  (A) The resident landowner.
  (B) The spouse of the resident landowner.
  (C) A child of the resident landowner who is living with the landowner.
(4) For a wild turkey taken on land leased from another person, each of the following:
  (A) The resident lessee who farms the land.
  (B) The spouse of the resident lessee.
  (C) A child of the resident lessee who is living with the lessee.
(5) An Indiana serviceman or servicewoman hunting under IC 14-22-11-11.

(l) The feathers and beard of a wild turkey must remain attached while the wild turkey is in transit from the site where taken. *(Natural Resources Commission; 312 IAC 9-4-11; filed May 12, 1997, 10:00 a.m.: 20 IR 2710; filed May 28, 1998, 5:14 p.m.: 21 IR 3715)*

SECTION 8. 312 IAC 9-4-14 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-4-14 Endangered and threatened species; birds
Authority: IC 14-22-2-6; IC 14-22-34-17
Affected: IC 14-22

Sec. 14. The following species of birds are threatened or endangered and are subject to the protections provided under 312 IAC 9-2-7:

(1) American bittern (Botaurus lentiginosus).
(2) Least bittern (Ixobrychus exilis).
(3) Black-crowned night-heron (Nycticorax nycticorax).
(4) Yellow-crowned night-heron (Nyctanassa violacea).
(5) Trumpeter swan (Sygnus buccinator).
(6) Osprey (Pandion haliaetus).
(7) Bald eagle (Haliaeetus leucocephalus).
(8) Northern harrier (Circus cyaneus).
(9) Peregrine falcon (Falco peregrinus).
(10) Black rail (Laterallus jamaicensis).
(11) King rail (Rallus elegans).
(12) Virginia rail (Rallus limicola).
(13) ~~Sandhill~~ **Whooping** crane (Grus ~~canadensis).~~ **americana).**
(14) Piping plover (Charadrius melodus).
(15) Upland sandpiper (Bartramia longicauda).
(16) Least tern (Sterna antillarum).
(17) Black tern (Chlidonias niger).
(18) Barn owl (Tyto alba).
(19) Short-eared owl (Asio flammeus).
(20) Bewick's wren (Thryomanes bewickii).
(21) Sedge wren (Cisothorus platensis).
(22) Marsh wren (Cisothorus palustris).
(23) Loggerhead shrike (Lanius ludovicianus).
(24) Golden-winged warbler (Vermivora chrysoptera).
(25) Kirtland's warbler (Dendroica kirtlandii).
(26) Bachman's sparrow (Aimophila aestivalis).
(27) Henslow's sparrow (Ammodramus henslowii).
(28) Yellow-headed blackbird (Xanthocephalus xanthocephalus).

(Natural Resources Commission; 312 IAC 9-4-14; filed May 12, 1997, 10:00 a.m.: 20 IR 2712; filed May 28, 1998, 5:14 p.m.: 21 IR 3717)

SECTION 9. 312 IAC 9-5-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-5-7 Sale and transport for sale of reptiles and amphibians native to Indiana
Authority: IC 14-22-2-6; IC 14-22-26-3; IC 14-22-34-17
Affected: IC 14-22; IC 20-1-1-6; IC 20-1-1.6-2

Sec. 7. (a) This section governs the sale, transport for sale, or offer for sale or transport for sale of any reptile or amphibian native to Indiana, regardless of place of origin.

(b) Except as otherwise provided in this section and in section 6(g) of this rule, the sale, transport for sale, or offer to sell or transport for sale, a reptile or amphibian native to Indiana is prohibited.

(c) As used in this rule, "reptile or amphibian native to Indiana" means those reptiles and amphibians with the following scientific names, including common names for public convenience, but the scientific names control:

(1) Hellbender (Cryptobranchus alleganiensis).
(2) Mudpuppy (Necturus maculosus).
(3) Streamside salamander (Ambystoma barbouri).
(4) Jefferson's salamander (Ambystoma jeffersonianum).
(5) Blue-spotted salamander (Ambystoma laterale).
(6) Spotted salamander (Ambystoma maculatum).
(7) Marbled salamander (Ambystoma opacum).
(8) Smallmouth salamander (Ambystoma texanum).
(9) Eastern tiger salamander (Ambystoma tigrinum tigrinum).
(10) Eastern newt (Notophthalmus viridescens).
(11) Green salamander (Aneides aeneus).
(12) Northern dusky salamander (Desmognathus fuscus).
(13) Two-lined salamander (Eurycea cirrigera).

(14) Longtailed salamander (Eurycea longicauda).
(15) Cave salamander (Eurycea lucifuga).
(16) Four-toed salamander (Hemidactylium scutatum).
(17) Redbacked salamander (Plethodon cinereus).
(18) Zigzag salamander (Plethodon dorsalis).
(19) Slimy salamander (Plethodon glutinosus).
(20) Ravine salamander (Plethodon richmondi).
(21) Red salamander (Pseudotriton ruber).
(22) Lesser siren (Siren intermedia).
(23) Eastern spadefoot toad (Scaphiopus holbrooki).
(24) American toad (Bufo americanus).
(25) Fowler's toad (Bufo fowleri).
(26) Cricket frog (Acris crepitans).
(27) Cope's gray tree frog (Hyla chrysoscelis).
(28) Eastern gray tree frog (Hyla versicolor).
(29) Spring peeper (Pseudacris crucifer).
(30) Striped chorus frog (Pseudacris triseriata).
(31) Crawfish frog (Rana areolata).
(32) Plains leopard frog (Rana blairi).
(33) Bullfrog (Rana catesbeiana).
(34) Green frog (Rana clamitans).
(35) Northern leopard frog (Rana pipiens).
(36) Pickerel frog (Rana palustris).
(37) Southern leopard frog (Rana utricularia).
(38) Wood frog (Rana sylvatica).
(39) Common snapping turtle (Chelydra serpentina serpentina).
(40) Smooth softshell turtle (Apalone mutica).
(41) Spiny softshell turtle (Apalone spinifera).
(42) Alligator snapping turtle (Macroclemys temmincki).
(43) Eastern mud turtle (Kinosternon subrubrum).
(44) Musk turtle (Sternotherus odoratus).
(45) Midland painted turtle (Chrysemys picta marginata).
(46) Western painted turtle (Chrysemys picta bellii).
(47) Spotted turtle (Clemmys guttata).
(48) Blanding's turtle (Emydoidea blandingii).
(49) Map turtle (Graptemys geographica).
(50) False map turtle (Graptemys pseudogeographica).
(51) Ouachita map turtle (Graptemys ouachitensis).
(52) Heiroglyphic river cooter (Pseudemys concinna).
(53) Eastern box turtle (Terrapene carolina).
(54) Ornate box turtle (Terrapene ornata).
(55) Red-eared slider (Trachemys scripta elegans).
(56) Eastern fence lizard (Sceloporus undulatus).
(57) Slender glass lizard (Ophisaurus attenuatus).
(58) Six-lined racerunner (Cnemidophorus sexlineatus).
(59) Five-lined skink (Eumeces fasciatus).
(60) Broad-headed skink (Eumeces laticeps).
(61) Ground skink (Scincella lateralis).
(62) Worm snake (Carphophis amoenus).
(63) Scarlet snake (Cemophora coccinea).
(64) Racer (Coluber constrictor).
(65) Kirtland's snake (Clonophis kirtlandii).
(66) Northern ringneck snake (Diadophis punctatus).
(67) Black rat snake (Elaphe obsoleta obsoleta).
(68) Gray rat snake (Elaphe obsoleta spiloides).
(69) Western fox snake (Elaphe vulpina vulpina).
(70) Mud snake (Farancia abacura).
(71) Eastern hognose snake (Heterodon platirhinos).
(72) Prairie king snake (Lampropeltis calligaster calligaster).
(73) Black king snake (Lampropeltis getula nigra).
(74) Eastern milk snake (Lampropeltis triangulum triangulum).
(75) Red milk snake (Lampropeltis triangulum syspila).
(76) Northern copperbelly (Nerodia erythrogaster).
(77) Diamondback water snake (Nerodia rhombifer).
(78) Northern banded water snake (Nerodia sipedon).
(79) Rough green snake (Opheodrys aestivus).
(80) Smooth green snake (Opheodrys vernalis).
(81) Bull snake (Pituophis melanoleucus sayi).
(82) Queen snake (Regina septemvittata).
(83) Brown snake (Storeria dekayi).
(84) Redbellied snake (Storeria occipitomaculata).
(85) Crowned snake (Tantilla coronata).
(86) Butler's garter snake (Thamnophis butleri).
(87) Western ribbon snake (Thamnophis proximus).
(88) Plains garter snake (Thamnophis radix).
(89) Eastern ribbon snake (Thamnophis sauritus).
(90) Common garter snake (Thamnophis sirtalis).
(91) Western earth snake (Virginia valeriae).
(92) Northern copperhead (Agkistrodon contortrix).
(93) Cottonmouth moccasin (Agkistrodon piscivorus).
(94) Timber rattlesnake (Crotalus horridus).
(95) Eastern massasauga (Sistrurus catenatus).

(d) As used in this section, "sale" ~~includes.~~ **means:**
(1) barter, purchase, trade, or offer to sell, barter, purchase, or trade; ~~and~~ **or**
(2) serving as part of a meal by a restaurant, a hotel, a boardinghouse, or an eating house keeper; however, a hotel, a boardinghouse, or an eating house keeper may prepare and serve during open season to:
(A) a guest, patron, or boarder; and
(B) the family of the guest, patron, or boarder;
a reptile or amphibian legally taken by the guest, patron, or boarder during the open season.

(e) As used in this section, "transport" means to move, carry, or ship a wild animal protected by law by any means and for any common or contract carrier knowingly to move, carry, or receive for shipment a wild animal protected by law.

(f) A reptile or amphibian that is not on a state or federal endangered or threatened species list and with a color morphology that is:
(1) albinistic (an animal lacking brown or black pigment);
(2) leucistic (a predominately white animal); or
(3) xanthic (a predominately yellow animal);
is exempted from this section if it was not collected from the wild.

(g) Exempted from this section is an institution governed by,

and in compliance with, the Animal Welfare Act (7 U.S.C. 2131, et seq.) and 9 CFR 2.30 through 9 CFR 2.38 (January 1, 1998 edition). To qualify for the exemption, the institution must have an active Assurance of Compliance on file with the Office for the Protection of Risk, U.S. Department of Health and Human Services.

(h) Exempted from this section is a sale made under a reptile captive breeding license governed by section 9 of this rule.

(i) Exempted from this section is the sale to and purchase of reptiles or amphibians by a public school accredited under IC 20-1-1-6(8) or nonpublic school accredited under IC 20-1-1-6(11) and IC 20-1-1.6-2. This exemption does not authorize the sale of reptiles or amphibians by a public school or a nonpublic school.

(j) Exempted from this section is the sale and purchase of a bullfrog (Rana catesbeiana) tadpole or green frog (Rana clamitans) tadpole produced by a resident holder of a hauler and supplier permit or an aquaculture permit, if the tadpole is a byproduct of a fish production operation. As used in this subsection, a tadpole is the larval life stage of a frog for the period in which the tail portion of the body is at least one (1) inch long. *(Natural Resources Commission; 312 IAC 9-5-7; filed Jul 9, 1999, 5:55 p.m.: 22 IR 3673; errata filed Oct 26, 1999, 2:40 p.m.: 23 IR 589)*

SECTION 10. 312 IAC 9-6-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-6-3 Fish sorting restrictions and the prohibition of waste

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 3. ~~It is unlawful to~~ **(a) Except as provided in subsection (b), a person must not** sort and release a fish taken previously in the day in order to replace the fish with another where the same bag limit applies to both fish.

(b) A fish may be released without counting toward the daily bag limit only if the fish is as follows:

(1) Alive and in apparent good health.

(2) Capable of swimming away normally under its own power.

(3) Returned to the water from which it was taken before the end of the day.

(4) In a place where the immediate escape of the fish is not prevented.

(c) The intentional waste or destruction of any species of fish taken under this rule is prohibited unless the species is required by law to be killed. A person must not mutilate and return a fish to the water. This section does not, however, apply if a fish is required by law to be released or is lawfully used as bait.

(d) Offal or filth resulting from catching, curing, cleaning, or shipping fish in or near state waters must be burned, buried, or otherwise disposed in a sanitary manner that:

(1) does not pollute the water; and

(2) is not or does not become detrimental to public health or comfort.

(Natural Resources Commission; 312 IAC 9-6-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2715)

SECTION 11. 312 IAC 9-6-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-6-6 Areas closed to fishing

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 6. A person must not take or possess fish at any of the following locations:

(1) From April 1 through June 15 from:

(A) the east branch of the Little Calumet River in Porter County from U.S. 12 upstream to U.S. 20, excluding its tributaries; and

(B) Trail Creek in LaPorte County from the Franklin Street Bridge in Michigan City upstream to U.S. 35, excluding its tributaries.

(2) Within one hundred (100) feet above or below the Linde Dame (Prax Air) on the East Branch of the Little Calumet River within Porter County (Northeast Quarter of Section 32, Township 37 North, Range 6 West).

(3) From the East Race waterway in the city of South Bend in St. Joseph County.

(4) From the St. Joseph River in St. Joseph County:

(A) within one hundred (100) feet of the entrance or exit of the East Race waterway;

(B) from the fish ladders located at the South Bend dam in the city of South Bend or the ~~Uniroyal~~ **Downtown Mishawaka** dam in the city of Mishawaka;

(C) within one hundred (100) feet of the entrances and exits of those fish ladders located at the South Bend dam or the ~~Uniroyal~~ **Downtown Mishawaka** dam; and

(D) while fishing from a boat within two hundred (200) feet downstream of the South Bend dam or downstream of the ~~Uniroyal~~ **Downtown Mishawaka** dam to the ~~State Road 331~~ **Main Street** bridge **in the city of Mishawaka**.

(5) From April 20 to the last Saturday in April from:

(A) the Pigeon River (and Pigeon Creek) in LaGrange County from the Steuben County line to County Road 410 East (Troxel's bridge), but excluding the impoundment known as the Mongo Mill Pond;

(B) Harding Run, Curtis Creek, Bloody Run, and Graveyard Run (tributaries of the Pigeon River) in LaGrange County;

(C) Turkey Creek north of County Road 100 South in LaGrange County; and

(D) Rainbow Pit located in the Pigeon River Fish and

Wildlife Area approximately one and one-tenth (1.1) miles east of Ontario in LaGrange County.

(Natural Resources Commission; 312 IAC 9-6-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2715; filed May 28, 1998, 5:14 p.m.: 21 IR 3719; errata filed Aug 25, 1998, 3:02 p.m.: 22 IR 125)

SECTION 12. 312 IAC 9-7-2 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-2 Sport fishing methods, except on the Ohio River

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 2. (a) Except as provided under section 13 of this rule with respect to the Ohio River, this section governs the lawful methods for fishing under this rule.

(b) An individual may take fish with the aid of illumination of a spotlight, search light, or artificial light.

(c) An individual may take fish with not more than three (3) poles, hand lines, or tip-ups at a time. Except as provided in subsection (g), affixed to each line shall be no more than (2) hooks or two (2) artificial baits or harnesses for use with live bait.

(d) ~~It is unlawful to~~ **A person must not** take fish from waters containing state-owned fish, waters of this state, or boundary waters by means of a hook dragged or jerked through the water with the intent to snag fish on contact.

(e) ~~It is unlawful to~~ **A person must not** take trout or salmon from a waterway unless the fish is hooked in the mouth.

(f) ~~It is unlawful to~~ **A person must not** fish with more than ten (10) limb lines or drop lines at a time. Each line shall have not more than one (1) hook affixed and must bear a legible tag with the name and address of the user. Each line shall be attended at least once every twenty-four (24) hours. A limb line or drop line shall not be used within three hundred (300) yards of a dam which wholly or partly crosses a waterway.

(g) ~~It is unlawful to~~ **A person must not** ice fish, except as provided ~~in this subsection.~~ **as follows:**

(1) A tip-up must be constantly in sight of the user and must have affixed a legible tag bearing the name and address of the user.

(2) An ice ~~shanty~~ **fishing enclosure that is placed on the waters of this state** must bear the name and address of the owner visibly in three (3) inch block letters on ~~the door~~ **at least one (1) exterior vertical side.** At least one (1) red reflector, ~~shall~~ **or a three (3) inch by three (3) inch reflective material strip, must** be mounted on each exterior side of ~~a shanty.~~ **an ice fishing enclosure.**

(3) An ice ~~shanty~~ **fishing enclosure** must be removed from waters of this state before ice-out.

(4) If an ice ~~shanty~~ **fishing enclosure** is used after February 15 of a calendar year, the ~~shanty~~ **ice fishing enclosure** must be removed daily.

(5) As used in this subsection, "ice fishing enclosure" means an ice shanty or ice fishing tent.

(h) ~~It is unlawful to~~ **A person must not** take fish with more than one (1) trot line, set line, or throw line. A line must have no more than fifty (50) hooks affixed. A trot line must be anchored to the bottom or set not less than three (3) feet below the surface of the water. A legible tag with the name and address of the user must be affixed to each trot line. Each trot line must be attended at least once every twenty-four (24) hours. It is unlawful to take fish from Lake Michigan with a trot line, set line, or throw line.

(i) ~~It is unlawful to~~ **A person must not** take fish from a lake with free float lines or to fish from a waterway with more than five (5) free-float lines. Not more than one (1) hook shall be affixed to each line. A float shall bear the name and address of the user and must not be constructed of glass. Each free-float line must be in constant attendance by the person fishing.

(j) ~~It is unlawful to~~ **A person must not** possess a fish spear, gig, gaff, pitchfork, bowfishing equipment, crossbow, grab hook, spear gun, club, snag hook, or underwater spear in, on, or adjacent to:

(1) the Galena River (LaPorte County);
(2) Trail Creek (LaPorte County);
(3) the East Branch of the Little Calumet River (LaPorte and Porter Counties);
(4) Salt Creek (Porter County);
(5) the West Branch of the Little Calumet River (Lake and Porter Counties);
(6) Burns Ditch (Porter and Lake Counties);
(7) Deep River downstream from the dam at Camp 133 (Lake County); or
(8) the tributaries of these waterways.

(k) ~~It is unlawful to~~ **A person must not** fish the waterways described in subsection (j) or from the St. Joseph River and its tributary streams from the Twin Branch dam downstream to the Michigan state line (St. Joseph County) with more than one (1) single hook per line or one (1) artificial bait or harness for use with live bait. Single hooks, including those on artificial baits, shall not exceed one-half (½) inch from point to shank. Double and treble hooks on artificial baits shall not exceed three-eighths (⅜) inch from point to shank.

(l) ~~It is unlawful to~~ **A person must not** take smelt from other than Lake Michigan and Oliver Lake in LaGrange County by the use of dip nets, seines, or nets except from March 1 through May 30 with either of the following:

(1) One (1) dip net not to exceed twelve (12) feet in diameter.
(2) One (1) seine or net not to exceed twelve (12) feet long

and six (6) feet deep and having a stretch mesh larger than one and one-half (1½) inches.

Each seine or net shall have affixed a legible tag with the name and address of the user.

(m) An individual may, by means of a fish spear, gig, speargun, or underwater spear, take only any sucker, carp, gar, bowfin, buffalo, or shad and only from the following waterways:

(1) West Fork of the White River from its junction with the East Fork upstream to the dam below the Harding Street generating plant of the Indianapolis Power and Light Company in Marion County.

(2) East Fork of the White River from its junction with the West Fork upstream to the dam at the south edge of the city of Columbus in Bartholomew County.

(3) White River from its junction with the West Fork of the White River and East Fork of the White River to its junction with the Wabash River in Gibson, Knox, and Pike Counties.

(4) Wabash River from its junction with the Ohio River upstream to State Road 13 at the south edge of the city of Wabash in Wabash County.

(5) Tippecanoe River upstream from its junction with the Wabash River to one-half (½) mile below its junction with Big Creek in Carroll County. (It is unlawful to possess a fish spear or fish gig in, on, or adjacent to the Tippecanoe River from one-half (½) mile below its junction with Big Creek in Carroll County upstream to the Oakdale Dam which forms Lake Freeman.)

(6) Maumee River from the Ohio state line upstream to the Anthony Boulevard Bridge in the city of Fort Wayne.

(7) Kankakee River from the Illinois state line upstream to State Road 55 bridge south of the city of Shelby in Lake County.

(8) St. Joseph River in St. Joseph and Elkhart Counties.

(n) An individual may use a pitchfork or bow and arrow on a waterway only:

(1) to take any sucker, carp, gar, bowfin, buffalo, or shad; between

(2) sunrise and sunset.

(o) In addition to any other lawful method, an individual may take a sucker, carp, gar, bowfin, buffalo, or shad:

(1) by bow and arrows from Lake Michigan; or

(2) by spear, gig, spear gun, underwater spear, pitchfork, or bow and arrows from another lake.

(p) An individual may take a sucker, carp, gar, or bowfin with not more than one (1) snare only between sunrise and sunset. *(Natural Resources Commission; 312 IAC 9-7-2; filed May 12, 1997, 10:00 a.m.: 20 IR 2716; filed May 28, 1998, 5:14 p.m.: 21 IR 3719)*

SECTION 13. 312 IAC 9-7-3 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-3 Catfish

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 3. (a) ~~It is unlawful to~~ **A person must not** possess channel catfish, blue catfish, or flathead catfish taken from a waterway unless those catfish are at least ten (10) inches long.

(b) Except as otherwise provided in subsection (c), the daily bag limit is ten (10) for any combination of channel catfish, blue catfish, and flathead catfish taken from a lake.

(c) Channel catfish may be taken from Gibson Lake (Gibson County) **and Turtle Creek Reservoir (Sullivan County)** without regard to a bag limit. *(Natural Resources Commission; 312 IAC 9-7-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; filed May 28, 1998, 5:14 p.m.: 21 IR 3721)*

SECTION 14. 312 IAC 9-7-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-6 Black bass

Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 6. (a) Except as otherwise provided in this section, the aggregate daily bag limit is five (5) black bass.

(b) The aggregate daily bag limit is three (3) for black bass taken from Lake Michigan. A person must not possess more than three (3) black bass while fishing in or on Lake Michigan.

(c) Except as otherwise provided in this section, the minimum size limit for black bass taken from a waterway is twelve (12) inches but is fourteen (14) inches for black bass taken from lakes (including Lake Michigan).

(d) No minimum length limit for largemouth bass applies for the lakes listed in this subsection as follows:

(1) Brownstown Pit in Jackson County.
(2) Burdette Park Lakes in Vanderburgh County.
(3) Chandler Town Lake in Warrick County.
(4) Cypress Lake in Jackson County.
(5) Deming Park Lakes in Vigo County.
(6) Garvin Park Lake in Vanderburgh County.
(7) Glen Miller Pond in Wayne County.
(8) Hayswood Lake in Harrison County.
(9) Henry County Memorial Park Lake in Henry County.
(10) Hovey Lake in Posey County.
(11) Krannert Lake in Marion County.
(12) Lake Sullivan in Marion County.
(13) Ruster Lake in Marion County.
(14) Schnebelt Pond in Dearborn County.

(e) A person must not take or possess a largemouth bass unless the largemouth bass is less than twelve (12) inches long or more than fifteen (15) inches long from the following designated waters:

(1) Buffalo Trace Lake in Harrison County.
(2) Celina Lake in Perry County.
(3) Delaney Park Lake in Washington County.
(4) Indian Lake in Perry County.
(5) Saddle Lake in Perry County.
(6) Scales Lake in Warrick County.
(7) Shakamak State Park Lakes in Clay County, Greene County, and Sullivan County.
(8) Tipsaw Lake in Perry County.
(9) ~~Westwood Run in Henry~~ **Ferdinand State Forest Lake in Dubois** County.

(f) The daily bag limit is one (1) largemouth bass from Turtle Creek Reservoir in Sullivan County. A person must not take or possess a largemouth bass from Turtle Creek Reservoir unless the largemouth bass is at least twenty (20) inches long.

(g) A person must not take or possess a largemouth bass from Patoka Lake (Orange, Crawford, and Dubois Counties) or Dogwood Lake (Daviess County) unless the largemouth bass is at least fifteen (15) inches long.

(h) A person must not take or possess a largemouth bass from Harden Lake (Parke County) unless the largemouth bass is at least sixteen (16) inches long.

(i) The daily bag limit is two (2) largemouth bass, and a person must not take or possess a largemouth bass unless the largemouth bass is at least eighteen (18) inches long, from the following designated waters:
(1) Tri-County State Fish and Wildlife Area.
(2) Robinson Lake in Whitley County and Kosciusko County.
(3) Ball Lake in Steuben County.
(4) Gibson Lake in Gibson County.

(j) A person must not take or possess a largemouth bass from Dove Hollow Lake at Glendale State Fish and Wildlife Area.

(k) If this section prohibits a person from taking or possessing a black bass from a specified lake or waterway, a person must not possess a bass of the prohibited class on or adjacent to the lake or waterway. *(Natural Resources Commission; 312 IAC 9-7-6; filed May 12, 1997, 10:00 a.m.: 20 IR 2718; filed May 28, 1998, 5:14 p.m.: 21 IR 3721)*

SECTION 15. 312 IAC 9-7-12 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-12 Walleye; sauger; saugeye
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 12. (a) The daily bag limit is six (6) for any combination of walleye, sauger, or saugeye.

(b) Except on ~~Sullivan Lake and~~ the Ohio River, and as provided in subsection (c), a person must not possess a walleye or saugeye unless it is at least fourteen (14) inches long.

(c) A person must not possess a walleye from the St. Joseph River in St. Joseph County or Elkhart County unless it is at least fifteen (15) inches long. *(Natural Resources Commission; 312 IAC 9-7-12; filed May 12, 1997, 10:00 a.m.: 20 IR 2719)*

SECTION 16. 312 IAC 9-7-13 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-13 Trout and salmon
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 13. (a) A person must not possess a brook trout, rainbow trout, or brown trout unless the trout is as follows:
(1) Except as provided in subsection (d), at least seven (7) inches long.
(2) Taken from the last Saturday of April after 5 a.m., local time, through December 31, if taken from other than a lake.

(b) Except as otherwise provided in this section, the daily bag limit is five (5) trout.

(c) Except as provided in subsection (d), the daily bag limit for lake trout is three (3).

(d) A person must not possess a brown trout from Oliver Lake, Olin Lake, or Martin Lake (LaGrange County) unless the trout is at least eighteen (18) inches long. The daily bag limit is five (5) trout of which no more than one (1) shall be brown trout.

~~(d)~~ **(e)** A person must not possess a trout or salmon taken from Lake Michigan or its tributaries unless the fish is at least fourteen (14) inches long. The daily bag limit is five (5) for any combination of trout and salmon taken under this subsection, of which no more than two (2) shall be lake trout. Exempted from this subsection, however, are trout taken from the St. Joseph River in St. Joseph and Elkhart Counties and its tributaries upstream from the Twin Branch Dam.

~~(e)~~ **(f)** A person must not possess more than a single day's bag limit identified in subsection (d) while fishing on Lake Michigan.

~~(f)~~ **(g)** The areas closed to trout and salmon fishing under this section are in addition to areas closed to all fishing under 312 IAC 9-6-6. *(Natural Resources Commission; 312 IAC 9-7-13; filed May 12, 1997, 10:00 a.m.: 20 IR 2720; filed May 28, 1998, 5:14 p.m.: 21 IR 3722)*

SECTION 17. 312 IAC 9-7-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-17 Charter fishing boat operator's license
Authority: IC 14-22-2-6; IC 14-22-15
Affected: IC 14-22-15-4

Sec. 17. (a) An individual may not take another individual sport fishing for hire on:
(1) Indiana waters;
(2) waters containing state-owned fish; or
(3) state boundary waters;
without a charter fishing boat operator's license issued by the director under IC 14-22-15-4 and this section.

(b) A license holder under this section shall, on a departmental form, keep legible and accurate daily fishing records of the:
(1) species;
(2) numbers, locations, and dates of fish taken; and
(3) number of fishermen and hours fished;
while engaged in charter fishing. These daily records shall be recorded before the licensed fishing person departs the boat at the conclusion of the fishing trip.

(c) A license holder under this section shall, on a departmental form, prepare a monthly report of the information maintained on the daily fishing records. The monthly report shall be submitted to the director or the director's representative before the fifteenth day of each month following the month covered. The report shall be submitted each month regardless of whether charter fishing activity occurs in the month covered **unless the license holder has submitted an Inactive License Form to signify that no fishing activity will take place for the remainder of the calendar year. The Inactive License Form shall be submited to the director or the director's representative before the fifteenth day of the month following the month the license is deemed inactive.**

(d) The director or the director's representative may, at any reasonable time, inspect the daily fishing records required under subsection (b) or IC 14-22-15-4. *(Natural Resources Commission; 312 IAC 9-7-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2721; filed May 28, 1998, 5:14 p.m.: 21 IR 3723)*

SECTION 18. 312 IAC 9-7-18 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-7-18 Yellow perch
Authority: IC 14-22-2-6
Affected: IC 14-22

Sec. 18. **(a)** The daily bag limit is fifteen (15) yellow perch on Lake Michigan.

(b) A person must not possess more than fifteen (15) yellow perch while fishing on Lake Michigan. *(Natural Resources Commission; 312 IAC 9-7-18; filed May 28, 1998, 5:14 p.m.: 21 IR 3723)*

SECTION 19. 312 IAC 9-10-17 IS AMENDED TO READ AS FOLLOWS:

312 IAC 9-10-17 Aquaculture permit
Authority: IC 14-22-2-6
Affected: IC 14-22-27

Sec. 17. (a) A person must not import, raise, sell, or transport fish into or within Indiana without an aquaculture permit issued under this section, except as provided in:
(1) sections 14 through 15 of this rule; or
(2) subsection (b).

(b) A permit is not required under this section by a person who possesses fish, other than those listed in 312 IAC 9-6-7, and who is engaged in either of the following:
(1) The production, importation, or sale of live fish exclusively for use in the aquarium pet trade.
(2) The importation of live fish exclusively for confinement and exhibition in a zoo or another public display.

(c) An application for an aquaculture permit shall be prepared on a department form. The director may attach any appropriate conditions to a permit. The permit expires on December 31 of the year of issuance.

(d) In addition to the requirements of subsection (c), an aquaculture permit to import, produce, raise, sell, or transport triploid grass carp is based on the following conditions:
(1) No stocking of triploid grass carp may take place in public waters except as provided in IC 14-22-27.
(2) The permit holder must deliver and stock the fish.
(3) A copy of each bill of sale and triploidy certification must be conveyed to each buyer and must be retained by the permit holder for two (2) years.
(4) A purchaser of triploid grass carp must retain the bill of sale and the triploidy certification for at least two (2) years.
(5) A permit holder must submit a quarterly report on a departmental form not later than the fifteenth day of the month following the end of a quarter, **regardless of whether fish have been stocked during the time period.**
(6) Fish holding facilities, stocking reports, stocking trucks, other documents required under this subsection, and live fish may be inspected at any reasonable time by the division or a conservation officer. Not more than six (6) fish from a lot or truck load may be removed by the department for verification of the chromosome number.
(7) As used in this subsection and subsection (e), "triploid grass carp" means grass carp certified to be triploid by the U.S. Fish and Wildlife Service.

(e) In addition to the requirements of subsection (c), an aquaculture permit to import, produce, raise, sell, or transport diploid grass carp is based on the following conditions:
(1) No stocking of diploid grass carp may take place in any public or private waters except as provided in this subsection and IC 14-22-27.
(2) A live diploid grass carp may be possessed only for the purpose of producing triploid grass carp or producing diploid grass carp capable of producing triploid grass carp.
(3) A diploid grass carp may be sold only to a person who holds a valid aquaculture permit.

(4) All diploid grass carp must be held in a closed aquaculture system.

(5) A permit holder who imports, produces, raises, sells, or transports diploid grass carp must submit an annual report to the division on a department form.

(6) A permit holder who imports, produces, raises, sells, or transports diploid grass carp must be capable of accurately determining the number of sets of chromosomes of the fish in the possession of the permit holder under certification procedures of the U.S. Fish and Wildlife Service.

(Natural Resources Commission; 312 IAC 9-10-17; filed May 12, 1997, 10:00 a.m.: 20 IR 2736; filed May 28, 1998, 5:14 p.m.: 21 IR 3730)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 22, 2001 at 6:00 p.m., at the Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana the Natural Resources Commission will hold a public hearing on amendments to 312 IAC 9 that govern hunting deer by firearms, hunting deer by bow and arrows, hunting of deer in confined areas, turkey, brown trout, largemouth bass, walleye, channel catfish, fish sorting and a prohibition on waste, charter fishing, yellow perch, ice fishing, whooping cranes, sandhill cranes, aquaculture permit, and the meaning of "sale" as it applies to native reptiles and amphibians and makes numerous technical corrections. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W272 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Michael Kiley
Chairman
Natural Resources Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #01-249

DIGEST

Amends 326 IAC 2-6, Emission Reporting, to add definitions to clarify the requirements, revise existing definitions for clarification and consistency, change applicability, and to require the reporting of hazardous air pollutants (HAPs). Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: November 1, 1997, Indiana Register (21 IR 801).

First Notice of Comment Period: (LSA# 00-44, Readoption of Rules in title 326 under IC 13-14-9.5): March 1, 2000, Indiana Register, (23 IR 1488).

Continuation of First Notice of Comment Period: (LSA# 00-44): May 1, 2000, Indiana Register (23 IR 2109).

Second Notice of Comment Period and First Notice of Hearing: February 1, 2001, Indiana Register (24 IR 1462).

Date of First Hearing: April 12, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on February 1, 2001 at 24 IR 1462. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

The proposed rule contains numerous changes from the draft rule that make the proposed rule sufficiently different from the draft rule that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#01-249 Emission Reporting
Kathryn Watson, Chief
Air Programs Branch
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by August 22, 2001.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from February 1, 2001 through March 5, 2001 on IDEM's draft rule language. IDEM received comments from the following parties:

Accra Pac Group, (APG)
American Electric Power, (AEP)
Bethlehem Steel Corporation, (BSC)
BP Amoco Oil, (BP)
Citizens Gas & Coke Utility, (CGCU)
City of Indianapolis, (INDPLS)
Coachmen Industries, Inc., (CII)
Countrymark Cooperative, Inc., (CCI)
Eli Lilly and Company, (ELC)
Essroc Cement Corporation, (ECC)
Ferro Corporation, (FC)

GE Plastics Mt. Vernon, Inc., (GEP)
General Cable Corporation, (GCC)
Indiana Cast Metals Association, (INCMA)
Indiana Manufacturers Association, (IMA)
Indiana Petroleum Council, (IPC)
Indianapolis Power & Light Company, (IPL)
Knauf Fiber Glass GMBH, (KFG)
Kimball International, (KI)
K-T Corporation, (KTC)
Milestone Contractors, L.P., (MCLP)
Monaco Coach Corporation, (MCC)
National Starch & Chemical, (NSC)
NiSource, (NS)
Purdue University, (PU)
Quemetco, Inc., (QI)
Richmond Power & Light Company, (RPL)
The Society of the Plastics Industry, (SPI)

Following is a summary of the comments received and IDEM's responses thereto:

GENERAL

Comment: On May 23, 2000, the U.S. EPA issued a proposed rule on consolidated emissions reporting (CER). U.S. EPA also requested comments on the viability of requiring the emission reporting of HAPs. At a minimum, IDEM should await the outcome of the CER rulemaking before finalizing its amendments to the air emission reporting rule. In their current form, the IDEM amendments are less stringent than the proposed CER rule because IDEM exempts mobile sources from reporting. (FC) (SPI)

Response: The purpose of the proposed CER was to improve and simplify emissions reporting by states to U.S. EPA. IDEM agrees that consistent, national minimum requirements, for HAP reporting would be beneficial and commented to that effect to U.S. EPA. However, it is uncertain when U.S. EPA will complete the CER rule. IDEM's rule has been in development for some time, and is now on a schedule to be completed due to the sunset statute. The draft rule was developed based on Indiana specific information. Mobile sources are not included in this rule because the rule applies to point sources and not to mobile sources. Mobile source emissions are estimated by the state using vehicle miles traveled and speed of the vehicles. If a federal rule is ultimately finalized that contains requirements that go beyond Indiana's rule, IDEM would start the process to amend the rule.

Comment: Sources in other states (New Jersey and Illinois) are only required to report HAPs if they are a potential major source for any parameter or have a percentage thereof. Only the larger sites need to report. IDEM should consider adopting similar rules. (NSC)

Response: The draft Indiana rule does focus on the larger sources. The draft rule is only applicable to Title V and FESOP sources. A FESOP source is only required to report HAPs if that is the pollutant for which it has taken a permit limit. Emissions from insignificant activities as defined in 326 IAC 2-7-1(21) are excluded from the draft rule. IDEM has established applicability and reporting thresholds and reporting levels in the revised draft rule.

Comment: IDEM's proposal to increase the reporting burden of stationary sources is unnecessary given the dramatic improvements in air quality observed throughout the United States over the past twenty (20) years. These reductions occurred while the economy doubled in size and total energy consumption increased. Thus, new reporting requirements are unnecessary and may be harmful in the current slowing and contracting economy. (SPI)

Response: It is true that Indiana's air quality has improved in the last decade with respect to certain pollutants. Carbon monoxide levels are down by twenty-nine percent (29%), large particle soot and dust pollution has been cut by thirty-five percent (35%), four counties have been given a clean air rating for sulfur dioxide, and four cities have been taken off the bad air list for smog by meeting the one hour ozone standard, while the state's economy has grown at a healthy rate. In order to assess continued improvement for these pollutants, evaluate air quality impacts of new construction and to have the most accurate information available when considering future control strategies and policies, accurate emissions data continue to be necessary.

In contrast to the pollutants just mentioned, however, far less is known about emissions of air toxics. Emissions data are an important tool in evaluating the effectiveness of these limits in achieving the maximum levels of reduction possible. The next part of the process will be to establish emission limits designed to minimize public health risks from exposure to these chemicals. This process requires a complete and accurate estimate of emissions in order to develop an effective and fair public health policy. Evidence over the last ten (10) to fifteen (15) years indicates the increasing public health impacts of exposure to air toxics and fine particulate matter. We are well into the process of applying technology-based limits on these emissions.

Comment: Resources are not available to adequately address the needs of the reporting requirements in the draft rule. (INCMA)

Comment: The changes, as proposed, would require a level of paperwork filings and cost to the refinery that would far outweigh the agency's expected benefits of the reportable data. (BP)

Response: IDEM will work with the regulated community to assure that the information requested requires the least amount of effort to generate the most useful information from the regulated community. Reporting levels and aggregation of like sources are two areas for further discussion. IDEM is preparing a fiscal impact analysis for this rule and would welcome specific cost information from sources. If sources are already collecting data as required by their permits, reporting the emissions should be a matter of reporting data that have already been gathered. The benefits of the data will be in increasing IDEM's understanding of where HAP emissions are coming from in a real world sense. While IDEM does collect monitoring data, there is no sure way of tracing those monitored pollutants to their origin, and permit information is based upon potential emissions which do not tend to be reflective of actual emissions or activities on a yearly basis.

Comment: IDEM should make use of available information and not add new reporting and recordkeeping requirements for minor sources. (MCC)

Response: IDEM presumes that minor sources in the comment means sources operating pursuant to a federally enforceable state operating permit, or FESOPs, which are synthetic minor sources. With respect to these sources, the Department does make use of available information. The problem is that much of this information is outdated, and that which is available is of varying quality. Over fifty percent (50%) of the FESOP sources are already required to provide emissions information on an annual basis because they are located in nonattainment or maintenance counties. With the changes included in the draft rule, the department expects that it would not increase recordkeeping requirements since sources must track their emissions in order to demonstrate compliance with emissions limitations in their permits.

Comment: If modeling is the primary goal of IDEM's draft rule language to get more detailed source information, justification for this level of data collection was not provided, but is consistent with what is required for such dispersion models as ISCST3 and ISC Prime models. For general screening analysis, simpler models are available, such as EPA's Regional Air Model (RAM), T-Screen. Generic source information can be developed for different sizes and types of operations to provide representative information and good regional impact

evaluations. The refinement of the emission data to provide actual emissions by emission unit or stack is impossible. This level of detail would require recordkeeping and monitoring efforts several levels of magnitude above the current monitoring requirements and would still be a wild guess. (MCC)

Response: IDEM appreciates the recommendations for dispersion models and modeling protocols. However, dispersion modeling is not the only goal of the draft rule. It is just one of many uses for emissions data. Other uses include public access to actual emissions of hazardous air pollutants, evaluating the effectiveness of state and federal regulatory programs, and fee billing. Dispersion modeling is important for evaluating new source permit applications. The revised draft rule has simplified some of the reporting requirements.

Comment: If the final rules require the amount of information and level of detail contained in the proposal, IDEM should be required to issue a periodic report to the Air Pollution Control Board and the Environmental Quality Service Council describing in detail how the data was used to address specific issues or problems. (EL) (GEP) (KI)

Response: IDEM already provides updates to the Air Pollution Control Board and the Environmental Quality Service Council about its activities on a regular basis and would respond to any requests for specific information from any group.

Comment: The emission reporting rules in 326 IAC 2-6 should be taken out of Article 2 of Title 326 and placed in Article 1, since they are better categorized as a general requirement instead of a permitting requirement. (EL) (KI)

Response: IDEM has considered moving this rule to Article 1, General Provisions, and will continue to discuss this change.

Comment: The rule could provide IDEM with authority to request an individual source to provide more detailed HAP reporting and other source information on an as needed basis. This would allow IDEM to gather sufficient information to conduct modeling or risk assessment if warranted. (EL) (KI)

Response: IDEM agrees, and has included such a provision in the draft rule while reducing the reporting requirements for FESOPs and for major sources of HAP.

Comment: The existing rule is adequate and should not be changed. (BSC) (CCI) (ECC) (GCC) (IMA) (INCMA) (KFG) (KTC) (QI) (RPL)

Response: The draft rule revisions reflect areas in which the Department feels the existing rule is not adequate, specifically in accomplishing its intended purpose of providing a mechanism to develop a complete and accurate inventory of emissions from all point sources in the state for modeling and regulatory development, providing data necessary to assess the effectiveness of state and federal regulatory programs, and providing information that the public requests. Some of the rule changes have been requested by sources over the years.

Comment: The existing rule satisfies the requirements of determining emission for purposes of calculating Title V emission fees. Additional information is not required to be collected by Indiana because it is being collected by the federal government in connection with developing hazardous air pollutant standards and National Emissions standards for Hazardous Air Pollutants (NESHAP) standards under Section 112 of the Clean Air Act and other federal laws. (BSC) (CCI) (ECC) (GCC) (KFG) (KTC) (QI) (RPL)

Response: The Department agrees that the existing rule satisfies the requirements of determining emissions for purposes of calculating Title V operating permit fees, except for billable HAPs, but it does not clarify that "billable" hazardous air pollutants must be reported. This is necessary to accurately determine Title V operating permit fees. Fee assessment is not the primary purpose of the draft rule revisions. With respect to data collection to support NESHAP development, U.S. EPA does use a Section 114 data collection process. However, in some cases, data as much as ten (10) years old has been used for federal standard development. Additionally, the next phase of the federal air toxics program will rely on determining the true effectiveness of technology-based reductions in protecting the public health. This assessment will require as complete and accurate of an emissions inventory as possible. Thus, the draft rule includes U.S. EPA's list of urban air toxics in the list of reportable HAP.

Comment: IDEM should not confuse compliance reporting and emissions reporting. A compliance report covers a facility's compliance with each pertinent section of its permit and does not provide the same information as does emission reporting. Additional emission reporting would constitute an additional burden. (FC)

Comment: The proposed amendments appear to be silent on the issue of report format. The emission statements currently do not follow the "D section" of the sources' permit. For clarity and expanded usefulness, the emission statements should follow the "D section(s)" of the sources' permit. (INDPLS)

Comment: Requiring all FESOP permitted facilities in the state, including those located in attainment counties, to report actual emissions is duplicative with the FESOP required quarterly reports. Data submitted in the quarterly reports is based on actual facility data for limits established in the permits. (MCLP)

Comment: Sources subject to Federally Enforceable State Operating Permits (FESOPs) that are not currently required to report emissions data should not be required to report under the proposed amendments. One of the few benefits of being FESOP sources in attainment counties is the fact that annual emission reports are not required. IDEM underestimates the additional burden for sources to convert the compliance reports that FESOP sources currently submit into reportable emissions information, and to compile/submit the highly detailed source information that is also part of the emission statement. (EL) (KI)

Response: Because Title V permits are not supposed to establish new requirements, the Department believes that it is more appropriate for the Section D compliance requirements to reflect the applicable requirements as established in the emission statement rule, 326 IAC 2-6. IDEM would like to explore further with interested persons the idea of streamlining compliance and emission reporting for FESOPs. FESOP sources are already required to keep records that are more detailed than the draft emission reporting rule requires. This draft rule would require that a source summarize and report the information gathered over the course of one year on its permitted units once every three years. The draft rule has been revised for FESOP source reporting. A FESOP will only report emissions for those pollutants for which a source has a FESOP limit and stack parameters and HAPs are excluded except those HAPs for which a source has a FESOP limit.

Comment: IDEM should fix, simplify, or get rid of the STEPs program. (MCC)

Response: The State Emission Program System (STEPs) program, that is now called iSTEPs. is a tool that simplifies reporting and has undergone significant revision. Many training sessions are being offered throughout the state to help sources use the electronic system. The Department encourages those interested in using the system to attend one of the training sessions to learn more about iSTEPs.

Comment: Consideration should be given to separating Elkhart County from St. Joseph County and classifying Elkhart County as an ozone attainment area. Have monitors in Elkhart County shown any exceedance of the ozone standard? Consideration should be given to classifying Elkhart County as an ozone attainment area and adding it to one of the three-year schedules in 326 IAC 2-6-3(c). (APG)

Comment: Sufficient data exist to support the separation of Elkhart and St. Joseph Counties into individual metropolitan statistical units.

Please develop language identifying Elkhart and St. Joseph Counties as separate units for determining compliance with national ambient air quality standards and for the purposes of applicability of 326 IAC 2-6. (CII)

Response: While Elkhart and St. Joseph Counties are considered separate metropolitan statistical areas (MSA), for purposes of the one-hour ozone standard, U.S. EPA considered them to be within the same airshed based on geographic location and shared industrial and population influences. Both counties are currently considered to be in attainment of the one-hour ozone standard and subject to maintenance requirements pursuant to the Clean Air Act. With respect to air quality monitoring, no exceedances of the one-hour or eight-hour ozone standards were observed in Elkhart County in 2000. However, an air quality monitor located in Cassopolis, Michigan recorded three (3) exceedances of the eight-hour ozone standard. The Cassaoplis monitor serves as a tool to assess downwind transport from the Elkhart County and St. Joseph County MSAs.

Comment: The sunset provisions were intended to review rules for their applicability and value. Significantly expanding the rule coverage brings into question IDEM's authority to and responsibility related to rule review. (INCMA)

Comment: The existing rule is adequate and should not be changed hurriedly because of the "sunset" statute. The sunset provisions were intended to review rules for their applicability and value. The draft presented expands the scope of the rule, which is certainly not the intent behind the sunset review process. (IMA)

Response: The emission reporting rule has been open for some time and much work has been done to develop these amendments. The sunset statute has put this rulemaking on a schedule for completion, but did not prompt the amendments which were already underway. IDEM has specifically separated this rule from other sunset rules to address needed changes in the current air emissions reporting rule. IDEM has followed all necessary rulemaking processes required by law, and will devote the necessary time and resources to work with interested persons to resolve the issues prior to final adoption.

Comment: The proposed changes in the emission reporting rules would put Indiana Kimball plants in a noncompetitive position due to the fact that other adjoining states do not require this degree of reporting for their industries. This proposed rule change could lead Kimball to evaluate migrating business away from their Indiana plants in favor of plants located in other states. (KI)

Response: Given that Kimball is currently required to report annual emissions, and under Section 313 requirements must provide some level of toxic chemical information to US EPA, the Department does not feel that the draft rule creates an excessive burden nor that it would put Kimball in a noncompetitive position. The draft rule revisions address emission reporting, not substantive requirements, such as air pollution controls or emission limits. Additionally, many other states either have or are considering adopting emission reporting requirements, including the reporting of HAP. IDEM will continue to work with all stakeholders to address specific concerns during the development of this rule.

APPLICABILITY

Comment: IDEM has indicated that one of the primary reasons for expanding the coverage of this rule is to improve emissions inventory information. IDEM has specifically excluded certain small sources from the rule. AEP recommends that facilities smaller than Federally Enforceable State Operating Permit (FESOP) sources be required to submit an emission statement once every six to ten years to minimize their burden, while generating significantly better emission inventory data than now exists. (AEP)

Response: Working with other states and U.S. EPA, the Department uses standardized procedures for estimating emissions from small sources. Rather than burden true minor sources, we feel these procedures are adequate.

Comment: The City of Indianapolis Environmental Resources Management Division (ERMD) agrees with IDEM that FESOP sources should be required to submit emission statements. Inclusion of FESOP sources will allow a more accurate inventory of pollutant emissions. (INDPLS)

Response: IDEM appreciates the support of the Indianapolis ERMD on this issue.

Comment: IPL believes that this rule should only apply to electric generating units with respect to the criteria air pollutants. It should be noted that the electric utility industry is not currently regulated under Section 112 of the Clean Air Act Amendments of 1990 and should not be required to report emissions for hazardous air pollutants. (IPL)

Response: Electric generating units can be large emitters of hazardous air pollutants (HAP). The proposed rule is structured so that all major sources, except FESOP sources, would report HAP emissions. IDEM believes that electric generating units should be subject to the same requirements as other major sources in the state. Section 112 regulates the control of HAPs and not the reporting of HAPs.

Comment: There is little value from extending the reporting requirements to smaller sources, especially FESOP sources. Companies elected to participate in the FESOP program under the guise of simpler permits and less recordkeeping and reporting burdens. To date, this has been a total hoax. Limit all annual emission reporting to Title V facilities only. (MCC)

Comment: The overall impact of adding small sources equals an insignificant percentage of overall emissions. Given the amount of resources necessary, we find it difficult to believe that the data gains are worth the resources and effort. The expansion of paperwork for most sources is unreasonable, particularly given that many of these sources selected FESOPs and Source Specific Operating Agreements (SSOAs) based upon a promised smaller paperwork and regulatory load. (INCMA)

Comment: IDEM indicated that one of the primary motivations behind the emission reporting proposal was the need to obtain "timely and reliable" data on FESOP emissions, some of which were over six (6) years old. If a source changes processes or adds equipment, the source must, at a minimum notify IDEM of those changes. Therefore, IDEM has access to the most accurate and up to date emission information available. IDEM's concern that U.S. EPA methodologies used to estimate emissions from FESOP sources resulted in overestimation of these sources' impacts on air pollution is unpersuasive and illogical as a basis for these burdensome amendments. Those methodologies are the only ones available and a source would have to use them for any emission reporting to any regulatory agency. (FC) (SPI)

Comment: IDEM should exclude FESOP sources from the rule. The current rule excludes FESOP sources because they are not major by definition. Therefore, the proposed rule dramatically increases the reporting burden under a FESOP for those sources without a corresponding environmental benefit. The reporting requirement and county schedule for FESOP reporting should be deleted. (ECC) (GCC)

Response: FESOP sources are exempt from burdensome monitoring and control requirements such as compliance assurance monitoring required for Part 70 sources. The FESOP program requires that sources do recordkeeping and reporting as a more cost effective way to demonstrate compliance with their permit limits. The draft rule has been revised to provide for lesser reporting requirements for FESOPs than Title V sources.

Comment: If FESOP sources are ultimately required to report emissions under 326 IAC 2-6, paragraph 326 IAC 2-6-1(c) should not be written as applying to sources "required to have" a FESOP, since the FESOP program is optional. (EL) (KI)

Response: IDEM agrees and 326 IAC 2-6-1(c) has been changed to read: "This rule applies to all sources that have an operating permit under 326 IAC 2-8, Federally Enforceable State operating Program."

Comment: In sections 326 IAC 2-6-1(b) and (c), IDEM has proposed to delete the phrase "not covered by subsection (a)". GE believes that this phrase ought to be left in the rule. With the phrase, the three categories in section 1(a), 1(b), and 1(c) are mutually exclusive. They do not overlap. If the phrase is not used, then a source could fall into both section 1(a) and 1(b), such as Title V source in a nonattainment area, or into section 1(a) and 1(c) such as a FESOP source in a nonattainment area. This creates a problem in determining how the compliance schedule provisions of section 3 apply. (GEP)

Response: IDEM agrees and the phrase "not covered by subsection (a)" will not be deleted.

Comment: The language in the proposed 326 IAC 2-6-1(d) appears to indicate that retail gasoline dispensing stations, operating under a permit by rule, which are located in nonattainment or maintenance counties would be subject to the rule. This interpretation does not seem to reflect the stated intent of the agency. In order to clarify the exemption provision, we would suggest eliminating "Except for sources subject to subsection (a)" from 326 IAC 2-6-1(d). (IPC)

Response: IDEM does not intend to collect emissions information from gasoline stations. Information on sales of gasoline is readily available and emissions can be calculated with this information. 326 IAC 2-11-2, Gasoline dispensing operations, is a permit by rule for gasoline stations which are exempted in the draft rule emission reporting rule. Compliance with the permit by rule limits should keep a station below the applicability thresholds in 326 IAC 2-6-1(a). IDEM does not currently collect emission reports from gasoline stations.

Comment: IDEM's basis for requiring HAP reporting is based on a facility's ability to emit greater than ten (10) tons per year of NO_x and VOCs in nonattainment counties, one hundred (100) tons per year of VOC, NO_x, PM_{10} and SO_2, or five (5) tons per year of lead. What about those facilities that have Title V permits or FESOPs that don't have these potentials to emit (PTEs)? INCMA believes there should be an exclusion for these facilities similar to the exemption provided for mines and quarries. (INCMA)

Response: Sources that have the potential to emit above Title V thresholds may be able to use a Source Specific Operating Agreement or permit by rule to avoid the Part 70 requirements and emission reporting. Sources that can establish federally enforceable limits on their potential to emit to below Title V thresholds are able to obtain a FESOP and report every three years, otherwise Title V sources must report annually.

Comment: All reporting thresholds should be set at one hundred (100) tons per year, both for attainment and nonattainment areas. (MCC)

Comment: The value of using the very low threshold of a potential to emit ten (10) tons per year of VOC in nonattainment and maintenance counties is unclear. Consideration should be given to raising this threshold to a level where a significant cost/benefit advantage can be clearly demonstrated, or using a default threshold of one hundred (100) tons per year. (APG)

Response: Section 182(a)(3)(B)(ii) of the Clean Air Act Amendments of 1990 indicates that states may waive the requirement to submit emissions for sources under twenty-five (25) tons of VOC and NO_x under certain conditions. IDEM proposes to raise the reporting threshold for NO_x and VOC to twenty-five (25) tons for the maintenance counties and to keep the current ten (10) tons reporting thresholds for nonattainment counties should remain the same. However, IDEM is exempting SSOAs, permits by rule and registrations from the emission statement reporting requirement.

DEFINITIONS

Comment: In the definition of "control efficiency", the words "diminished effectiveness" should be deleted or, if not deleted, should be elaborated upon so a facility knows the intended use and application for the words. The term as it is currently used is arbitrary. (IPL)

Comment: "Control efficiency" should be defined as "control efficiency shall account for control equipment downtime, operation with diminished effectiveness, and any other malfunctions that occurred while the emissions unit or units were in operation ". (GEP)

Response: IDEM agrees that "diminished effectiveness" should be deleted and that "control efficiency" should be calculated when the units are in operation.

Comment: The definition of "down time" is unclear as currently written. We believe the intent is to indicate the period when the control equipment is not operational while the process it is controlling is operating. We recommend the language be modified to "Downtime means the period of time when the control device is not operational during the corresponding period during which the source it controls is in operation". (NS)

Response: IDEM agrees and the definition has been reworded.

Comment: Both 326 IAC 2-6-3(a) and (b) refer to a "calendar year" as the applicable reporting period. The definition of "emission statement operating year" is duplicative and not needed. (EL) (GEP)

Comment: The Society of the Plastics Industry, Incorporated endorses IDEM's proposal to eliminate the requirement for the seasonal reporting of ozone precursors and replace it with a requirement for reporting ozone precursors on a calendar basis. (SPI)

Response: IDEM agrees that the definition of "emission statement operating year" is not necessary since the seasonal reporting of ozone precursors has been deleted.

Comment: The definition of "insignificant activities" in 326 IAC 2-7-1(21) includes language that allows sources to exclude emissions information from insignificant activities. This rule should include similar language so that a person reading the rule would know without having to refer to 326 IAC 2-7, that the reporting of emissions data for insignificant activities is not required. (EL) (KI)

Response: IDEM agrees and a reference to insignificant and trivial activities has been added to the draft rule at 326 IAC 2-6-4(a).

Comment: The definitions of "maximum design capacity", "maximum design rate" and "maximum nameplate capacity" are confusing. It is not clear what the purpose of each definition is and how sources are to use then distinctly. (BP) (EL) (GEP)

Comment: The definition of maximum design capacity and maximum design rate should be clarified to reflect that they are based solely on manufacturer's information and do not represent any regulatory or operational limit on the source. This can be accomplished by adding the phrase "as specified by the manufacturer" in both of these definitions. (AEP)

Response: "Maximum design rate" has been deleted. "Maximum design capacity" and "maximum nameplate capacity" will be required by large boilers and electric generating units subject to the NO_x SIP Call. "Maximum nameplate capacity" is determined by the manufacturer or builder of the equipment and can usually be found on the equipment's nameplate. The "maximum design capacity" is the nameplate capacity less any restrictions on the device due to operational design.

Comment: The definition of "oxides of nitrogen" should be clarified so it is explicit that nitrous oxide (N_2O) is excluded and it is not a covered pollutant. (APG)

Response: The definition of oxides of nitrogen has been changed to be consistent with other rules such as 326 IAC 10-1-2(15).

Comment: The term "plant" defined in 326 IAC 2-6-2(19) is not used anywhere in the rule and should be deleted. (EL) (GEP) (KI)

Response: IDEM agrees and the "plant" definition has been deleted.

Comment: With the North American Industrial Classification System (NAICS) defined in the draft rule (definition 16), the Standard Industrial Classification (definition 23) can be deleted. Milestone appreciates IDEM's use of the NAICS and encourages the transition from the archaic SIC to the more representative NAICS. (MCLP)

Response: IDEM agrees and the definition of "SIC code" has been deleted.

COMPLIANCE SCHEDULE

Comment: Should IDEM decide to move forward with this rule despite concerns expressed, the proposed implementation date does not allow enough time for facilities to prepare. INCMA suggest a transition year without enforcement to allow facilities to ramp up and establish their internal reporting mechanisms related to new reporting requirements. (INCMA)

Comment: The rule needs to provide a longer transition period from the current reporting requirements to the new reporting requirements. We recommend that the rule provide that the reports submitted in 2001 and 2002 be based on the existing rule requirements and that subsequent reports be based on the revised requirements. (EL) (KI)

Comment: It would be more appropriate to begin the submittal in 2003. Affected sources would have already had to implement mechanisms to gather the required information beginning January 1 of this year. (NS) (GEP)

Comment: If a new rule along the lines of the published draft rule is adopted, IDEM should specify in the rule that the first year a report is due under these new requirements will be 2003 to cover the 2002 calendar year. (BSC) (CCI) (ECC) (GCC) (KFG) (KTC) (QI) (RPL)

Comment: For sources subject to 326 IAC 2-6-3(b) that submit reports triennially, the first reports should not be required to be filed in 2002, 2003, and 2004, respectively, but instead in 2003, 2004, and 2005, respectively. (GEP)

Response: IDEM agrees that sources should not be required to report according to the draft rule changes until 2003. The draft rule has been revised to reflect this change.

Comment: Purdue notes that the list of counties provided under 326 IAC 2-6-3 appears to be incomplete, as only 89 counties are listed. Purdue presumes that all 92 Indiana counties should appear on one of the three lists. (PU)

Comment: The list under 326 IAC 2-6-3, compliance schedule, does not appear to include Marion County. Marion County should be included in the list. (INDPLS)

Comment: The county listing under 326 IAC 2-6-3, Compliance schedule, needs to include Marion, Clark, and Floyd Counties. (IPL)

Response: Clark, Floyd, and Marion Counties have been added to the draft rule.

Comment: Early reporting places a significant burden on companies and should not be required for frivolous and unsubstantiated reasons. IDEM's response to those companies asking for changes to the early reporting requirements is unacceptable and unsupported by facts. Reporting deadlines for all annual reports should be set at July 1. If this is a state implementation plan (SIP) or Code of Federal Regulations (CFR) requirement, change the SIP or CFR. Remove the early reporting requirements for all counties. (MCC)

Response: Maintenance plans are established to protect public health. In these plans is a requirement that if certain monitored pollutant levels are reached, the state has twelve (12) to eighteen (18) months to evaluate the problem and implement a solution. A key component of this evaluation is the emission inventory which should be available as soon as possible. The federal regulation, 40 CFR 51.321, requires that states must report for areas with maintenance plans by July 1, and in order to comply, IDEM must receive the information before that date.

Comment: To suggest that recordkeeping and reporting efforts are significantly reduced by saying a company only has to report every three years, demonstrates a total lack of understanding of what is required to set-up and maintain an emission tracking system. (MCC)

Response: The rule as proposed requires a source to report information that is generally required by a permit to be kept and is therefore only a reporting requirement. IDEM has heard from other sources that a triennial reporting requirement would relieve the burden on a significant number of sources. Title V and FESOP permits require that sources keep these records and the only additional requirement is to report them to IDEM in the form of an emission statement.

Comment: IDEM has proposed that facilities report actual emissions on a triennial cycle based on the county location within the state. According to IDEM, this will reduce the burden of reporting. Most companies are concentrated within certain regions of the state and will be required to submit emission reports for all or a majority of their facilities within the same reporting year, thereby increasing the burden to these companies. (MCLP)

Response: If most of a company's locations were in the same area of the state, reporting would only affect one year out of three. IDEM's policy is to assist sources in completing their emission statements.

Comment: IDEM should be encouraged to look at methods of submitting emission statement certifications electronically. This would simplify reporting and documents tracking. (MCC)

Response: As soon as a method is approved by the U.S. EPA for electronic certifications, IDEM will implement that process.

Comment: It would be appropriate to modify the proposed rule language to specify that submittals are timely if postmarked on or before the specified due date, consistent with the provisions used to govern the timely submittal of other documents. It is inappropriate to hold a source or company responsible for non-timely submittal when the delivery via the U. S. Postal Service or private carrier is out of the control of the company. (NS)

Response: IDEM policy is to recognize the U. S. Postal Service postmarks as the submittal date. This language will be inserted at 326 IAC 2-6-5(b). A private carrier delivery is in essence a contract between the company and the carrier. The department encourages affected businesses to factor in delivery time when reporting emissions.

REQUIREMENTS

Comment: Including the reporting of sixty four (64) HAPs is a welcome planning tool and a step toward evaluation whether the current MACT standards are effective in reducing public exposure to HAPs. Having an inventory in place will be an effective step forward if U.S. EPA develops risk based standards after current technology standards. (INDPLS)

Response: IDEM believes that HAP reporting is necessary to develop sound and realistic public policy in Indiana.

Comment: One approach that IDEM could consider is to focus the reporting of specific HAP emissions by source category, perhaps not to a single HAP per source category like many of the MACT standards, but more limited than asking single source categories to report emissions of fifty-eight (58) HAPs on questionable emission factors. (CGCU)

Response: IDEM will continue to consider this suggestion as the rulemaking process proceeds.

Comment: The Indiana Petroleum Council believes very strongly that appropriate HAP reporting thresholds must be part of the rule. In order to come up with reasonable thresholds, the Council would propose the creation of a subcommittee of the rule development work group made up of a few bright people from industry, the environmental community and the agency. (IPC)

Response: The Department has received extensive comment on this

issue and believes that revised draft language reflects this broad level of input. However, IDEM will be happy to meet with stakeholders individually or in groups to discuss this rule.

Comment: While we support the requirement for sources to report emissions of regulated air pollutants so that IDEM can collect Title V permit fees, establish correlations between air quality and emission levels, evaluate trends in point source emissions and in some cases project air quality impacts, we do not support a state-wide emission reporting rule, that will require sources to report vast amounts of information in great detail. IDEM should tailor the changes to the rule to achieve a more focused objective. (EL) (IPL) (KI).

Response: The commentors indicate that it may be better to focus emission reporting requirements in certain geographic areas or to address a more focused issue. However, it is important to note that the Office of Air Quality has responsibility for working with a broad group of interests across the state to improve and protect air quality, therefore, the focus of our efforts must address a broad range of air quality issues affecting the entire state. To narrow the number of HAP to report, IDEM used the U.S. EPA Urban Air Toxic Strategy HAP, toxicity weighted HAPs, high volume HAP reported to the toxic release inventory, monitored HAP and billable HAP.

Comment: It is unlikely that requiring emissions reporting by Title V and FESOP sources will aid in determining the point of origin for releases of vinylidene chloride, since this chemical has not been reported by any source in Indiana, even though it is on the TRI list. IDEM should explore other methods to determine from where this chemical is released. (FC) (IMA)

Response: Ambient air toxics monitoring data collected across the state indicate measurable levels of vinylidene chloride, which is a very hazardous chemical. The lack of reported data to the Toxics Release Inventory may be reflective of emission sources not complying with the federal reporting requirements or possibly secondary formation following emission from an industrial process. While the Department has no oversight of the federal TRI reporting, we do have authority to evaluate data submitted pursuant to state rule and to take enforcement action for noncompliance.

Comment: The requirements in 326 IAC 2-6-4(b)(3) and (b)(7) for sources to submit production information for each emission unit or each process raises significant issues for companies that wish to protect production information as confidential business information. This information does not enable IDEM to assess emission trends, protect air quality impacts, or determine unacceptable risk any better. It is information for information's sake. (EL) (KI)

Comment: GE is very concerned with several of the proposed requirements in 326 IAC 2-6-4 that a source provide to IDEM information concerning maximum design capacity, maximum nameplate capacity, annual fuel or process weight for each emissions unit, annual process rate for each process, and maximum design rate per hour. This information is precisely the type of information GE protects as trade secrets and confidential business information. Even if IDEM can justify a need for this information, IDEM must also provide a source with the opportunity to claim such information as confidential business information. Emission data are not allowed to be claimed as confidential pursuant to IC 13-14-11-1(b). (GEP)

Response: IC 13-14-11-1(b) states that emissions data are not confidential and is a direct interpretation of 40 CFR 52.301 and the Clean Air Act Section 114. Therefore, it is not unreasonable for IDEM to request the information needed to correctly identify the proper emissions as stated in this rule. However, IDEM will develop rule language to group individual emission units.

Comment: The additional (HAPs) pollutants to be reported should be based on a cost/benefit analysis taking into consideration that HAP emission information is or will be already available to IDEM in TRI reports, existing and new permits, and new maximum achievable control technology (MACT) requirements. (APG)

Comment: IDEM now proposes to add a subjectively derived lists of additional secondary compounds to the reporting requirements of this rule. The added cost to the regulated community does not support the minimal added value derived from emission unit based reporting on this proposed list of fifty-seven (57) new compounds. IDEM should perform a full cost/benefit analysis and make it available to the stake holders of our state prior to any addition of new reporting requirements under 326 IAC 2-6. (CII)

Response: The Department does understand the concerns for the fiscal impacts of new regulatory requirements. IC 4-22-2-28, IC 13-14-9-5, and IC 13-14-9-6 require the Department to perform a fiscal impact analysis based on the requirements of this draft rule. However, the Department is not aware of a cost-benefit analysis methodology that would weigh the public's interest in HAP emission information against the cost of collecting and reporting such information.

Comment: The requirement to report emissions of sixty-four (64) different pollutants layered onto the specific reporting requirements of the draft rule (such as requiring emissions data for each process at a source), the magnitude and complexity of the requirements increase at a near exponential pace. Providing detailed HAP emission rates for hundreds of emission units or dozens of processes leaves the agency with far more information than it needs to prioritize air toxics issues. (EL) (KI)

Response: The Department is looking at ways to minimize the reporting requirements and burden, including aggregation of like emission sources and aggregation of stacks for the stack parameter reporting. IDEM welcomes specific suggests for language on these concepts. The draft rule does include reporting levels.

Comment: The amount of information required to be submitted in the emission statement is burdensome and duplicative. Much of this information is identified in other paperwork submitted to the IDEM, including the permit application, quarterly reports, and stack test reports. The requirements for the emission statement, should be reduced to facility identification and actual emissions for parameters limited in the FESOP. (MCLP)

Response: Permits are based upon potential emissions, the compliance reports do not contain enough information to properly assure the emissions estimates, if included, and stack tests do not include information concerning process rates. All of this information is necessary to compile an accurate and complete emissions inventory. The department is exploring whether it is possible to combine reporting requirements for compliance and emission statements. The draft rule has been revised to require reporting only on those pollutants for which a FESOP source has a limit.

Comment: Although duplicative of current reporting requirements under the annual Toxics Release Inventory (TRI) program, we would also support annual plant-wide emission estimates of the individual HAPs listed in the rule, provided there is an appropriate *de minimis* level established. (EL) (IPL) (KI)

Comment: The requirement for reporting TRI HAPs is duplicative and needless. TRI reporting requirements are designed to include the majority of facilities importing/ manufacturing/processing the TRI chemicals in quantities equal to or above the TRI reporting thresholds. TRI reporting requirements currently capture data from Title V sources, FESOP sources and even some area sources. (FC) (IMA)

Comment: It is inappropriate and unnecessary for the sources subject to this rule to be required to submit information that they may already be reporting under other, different regulatory programs, such as TRI. In those cases, IDEM's submittal date should be no earlier than the submittal date(s) required by the other program areas. (NS)

Comment: The additional data sought is available from the facilities' TRI submissions. The information filed in the toxic release inventory program would provide IDEM with the information it has indicated it needs to meet the three goals stated in the second notice of comment period published in the February 1, 2001 Indiana Register. (BSC) (CCI) (ECC) (GCC) (KFG) (KTC) (QI) (RPL)

Comment: Emission reporting on an individual compound basis has been required under TRI reporting since 1986 and has not resulted in reliable emission inventories. When all the reports are collected and analyzed, the agency will still be left with unreliable and incomplete emissions data. (BP)

Response: IDEM agrees that reporting of plant level HAPs would be duplicative of federal TRI reporting requirements and that TRI reporting has not resulted in reliable emission inventories. TRI reports generally do not provide the level of detail IDEM needs to be able to evaluate the effectiveness of state and federal process based HAP regulations and develop a sound public policy for dealing with future HAP issues. IDEM believes the proposed reporting requirements, at the process level, would improve the accuracy of reported HAP emissions and provide information needed to quality assure estimated emissions. Sources might also find developing process based emission estimates helps improve the quality of the data they report to TRI. IDEM welcomes suggestions for aggregating reporting of like emission processes to reduce the reporting burden.

Comment: IDEM is requesting new information on hazardous air pollutant (HAP) emissions that is already provided to IDEM in TRI reports. The TRI reports basically provide everything IDEM is requesting, just in a different format and at a reporting limit that is more reasonable than no *de minimis* reporting limits. Basic statistics tell us that populations can be accurately described by obtaining representative samples and IDEM has adequate information to perform statistical analysis on these sources. Data submissions under TRI take a significant amount of effort and if there is a problem, lets fix it, not throw it out. (MCC)

Response: It is important to recognize that there are significant differences between what is required in the TRI reports and the draft rule revisions. Also, it is important to recognize that statistical extrapolation is only valid when a reliable sample is used. The level and quality of information, such as plant wide estimates, provided in the TRI reports does not provide for a reliable sample that could be extrapolated to process level estimates. The original intent of TRI reports was to inform the public of chemicals handled by businesses in their communities, not to evaluate emission trends or to develop public policy with respect to emission reduction approaches.

Comment: IPL opposes the use of stack parameters for toxic planning until such a time as technically justified ambient exposure concentrations for protecting public health have been promulgated by U.S. EPA and adopted by reference by IDEM. IPL believes that air quality modeling results without such standards for toxics or hazardous air pollutants are meaningless and only serve to raise more questions than they answer. (IPL)

Response: Modeling is a tool that allows us to better understand the fate and transport of pollutants and to assess whether emission reduction strategies are effective. It can also help determine where additional emissions reductions are needed, and can help assess the impact of new sources. IDEM requests suggestions for language to aggregate stack parameters information to reduce the reporting burden.

Comment: Probably no condition in the proposed rule is more burdensome and unnecessary that the requirement for specific process and emission information on individual emission units and stacks. If IDEM needs more refined information for modeling, they should utilize current information available from previous STEP submissions or from permit applications. Eliminate the requirements for emission unit and stack specific information. (MCC)

Comment: Requiring operating data, stack parameters, and emissions information at the emissions unit/process level for all sources is entirely unnecessary and unjustified. Unless there is a clearly defined specific problem that requires a higher level of detail, the reporting information should be based on plant-wide data or data from groups of like processes. Also, IDEM should use existing stack default values instead of requiring specific emission unit/process stack information. If there is a specific, justifiable need for more detailed information from a particular type of source, the reporting of such detailed information should be restricted to that type of source. (APG)

Comment: Title V and FESOP sources have already provided stack parameters in their permit applications. IDEM receives notification from the source for any stack, equipment or process changes. For IDEM to require the same information to be reported annually or tri-annually is duplicative and burdensome. (FC) (IMA)

Comment: The addition of operating data, stack parameters, and emissions information at the emission unit/process level for all applicable sources is burdensome and will be highly problematic for IDEM. The majority of the data in question is already available to IDEM in the form of permitting documentation and SARA 313 reports. IDEM currently receives enormous amounts of information that is not effectively utilized. (CII)

Comment: The operating data required in 326 IAC 2-6-4(b)(3)(A) should not be required on an emission unit basis, but on a point source or stack specific basis. In some cases, it is extremely difficult, if not impossible, to collect the requested information on a process or emission unit basis. Requiring emission unit specific information in these situations will induce an undue burden on sources to collect information. (NS)

Comment: The new requirement to report stack parameters is unnecessary for the vast majority of sources in the state. The requirement to report stack data "by process" makes no sense at a complex pharmaceutical manufacturing operation where "processes" change frequently and are not always associated with the same sets of equipment or stacks. (EL) (KI)

Response: Stack parameters are necessary for modeling. Stacks are identified with the appropriate parameters and then linked to a process. The iSTEPs program simplifies the reporting process by allowing a company to enter all of its stacks. Then when inputting process information, the program allows selection of a stack from a list of those entered for the source. Once the stack data is entered into the database, it will be there for the next reporting cycle. The information would only have to be updated to reflect any changes in the stack parameters, instead of being entered for each report. Some companies already report much of the stack information, which is still in IDEM's database. The department will use information that has already been supplied through the iSTEPs process, and no additional effort will be required of thos e company. Companies are already reporting criteria emissions at the process (or in some cases combined unit) level, so this type of reporting is not new. FESOP sources will not be required to report stack parameters. IDEM requests suggestions for language to aggregate stack parameters information to reduce the reporting burden.

Comment: IDEM should not require reporting of maximum design capacity or maximum nameplate capacity for emissions units because this information is often very difficult to determine and it is unnecessary for a program that is concerned with actual emissions. 326 IAC 2-6-4(b)(3)(C) and (F) should be deleted. (BSC) (CCI) (ECC) (GCC) (KFG) (KTC) (QI) (RPL)

Comment: IDEM would require sources to submit stack parameter information annually, but has not justified this burden. If IDEM needs

information for air modeling, it already has tools to request it. Requiring industry to submit the information just in case IDEM might use it is a waste of resources. (GEP)

Comment: Of particular concern is IDEM's proposal to require these sources to report not only criteria pollutants, but also HAPs by each emission stack. This presents a vast increase in the complexity of recordkeeping and reporting for each of our plants. This level of complexity greatly exceeds what our current Title V permits require and also exceeds the wood furniture NESHAP. (KI)

Response: Nameplate capacity and design capacity are required by the proposed federal emission reporting rule and will be required under the NO_x SIP Call rule. The state will require this data from NO_x SIP Call sources only. Emissions are calculated at the process level and summarized to the stacks associated with those processes. The draft rule does not require a source to estimate emissions at the stack level.

Comment: The actual emissions should be calculated using an emission factor based on the annual process rate. (MCLP)

Response: This is one of several options available for inputting data. Default standard emission factors are included for most processes.

Comment: The available emission factors to accurately report HAP emissions have not yet been developed nor certified by the IDEM or U.S. EPA for industry wide use. During the development of the MACT rule, EPA is also developing and certifying emission factors. Until this is complete and foundries can accurately report emissions, the IDEM stands to gain little. (INCMA)

Comment: Although the quality and quantity of emission factors have improved, there are still many processes with no approved emission factors applicable to their processes. In addition, IDEM's nonrule policy guidance on acceptance of industry supplied emission factors is vague and open to arbitrary decision making on the part of IDEM. (FC) (IMA) (SPI)

Comment: Even given "reasonable and appropriate" *de minimis* reporting levels, the lack of emission factors for "source specific processes" make accurate reporting impossible without stack testing. (FC)

Comment: Citizens Gas & Coke Utility questions the validity of emission inventory data that may be reported based on emission factors that have a "D", "E", or "U" rating in such databases as FIRE or in the AP-42 reference document. (CGCU)

Comment: The effect of the proposed rule in our view would be minimal due to the uncertainty surrounding the emission factors utilized for estimating purposes and the fact that point sources represent only a portion of total applicable emissions. While the quality and quantity of emission factors have improved, the proposed regulations would require a monumental and costly exercise producing a great amount of inaccurate data. (BP)

Response: The Department understands concerns raised about emission factors. However, we do not believe that the draft rule revisions present a monumental or costly exercise to estimate emissions. Estimates must be produced to comply with the Section 313 reporting requirements. While these are gross plant wide estimates, some level of process estimation must occur, even if it is a mass balance. Also, sources have to present some level of estimation in order to receive a permit. Stakeholders have put forth several ideas to address how and when emission factors can be approved for use. IDEM will consider these suggestions and make a proposal to ensure that sources may use new emission factor without a lengthy or burdensome approval process.

Comment: 326 IAC 2-6-5(b)(8) states that "nothing in this rule requires stack testing". However, the lack of *de minimis* reporting thresholds coupled with the absence of approved emission factors make accurate compliance with this proposed rule extremely problematic for many sources unless those sources resort to expensive stack testing to determine their emissions. (FC) (IMA)

Comment: BP appreciates the language provided at proposed 326 IAC 2-6-4(b)(8), that provides that stack testing is not required under the rule. We believe it should not be expected of sources in order to prove compliance and accurate reporting. (BP) (GEP)

Comment: While the draft rule stated that emission testing is not required, with no *de minimis* level, there would be no way short of testing that an industry would know they complied accurately with the reporting requirements or would be forced to use the worst cast scenario. (NSC)

Response: De minimis reporting levels were not included in the draft rule to encourage comment on this issue. The Department agrees that *de minimis* reporting levels are appropriate. The draft rule language has been revised to include *de minimis* reporting levels.

Comment: A review of the proposed chemical list shows seven (7) products that should be added because they are billable emissions not elsewhere accounted for. Otherwise, only one chemical on the list is present in significant concentrations in monitoring data. To arbitrarily add all the other listed chemicals when they are already being adequately addressed or absent any evidence that there is a problem is unreasonable and unnecessarily burdensome. Limit new HAPs reporting to only billable HAPs greater than one (1) ton. (MCC)

Comment: Consideration should be given to restricting the additional pollutants to be reported to the "billable HAPs". (APG)

Comment: Would "billable HAPs" only apply to Title V sources? Since Title V billing of regulated air pollutants is on a "per ton" basis, the increased fees resulting from, for example, dioxins, would be negligible. FESOP sources are currently billed at a set annual rate. (FC)

Comment: The initial list of top down HAPs should be limited to "billable" HAPs only. (CII)

Comment: Limit new HAPs to the "billable HAPs" greater than one (1) ton. (MCC)

Comment: Limit all HAP reporting for "billable HAPs" to HAP emissions greater than five (5) tons or if available 313 reporting thresholds. (MCC)

Response: It is important to reiterate that reported HAP information is necessary to develop sound and realistic public policy in Indiana. The approach suggested in the draft rule revisions is a sensible first step in developing accurate HAP information. Rather than arbitrarily identifying HAP to be reported, the Department has used criteria to identify those HAPs for which there is the most compelling need. Requiring only the larger sources (Title V sources and FESOPs who have HAP limits) to report emissions will help ease the reporting burden because it eliminates many small permitted and registered HAP emitting sources from the reporting requirements of the rule.

Comment: IDEM should adapt the same reporting requirements as the Superfund Amendments and Reauthorization Act of 1996 (SARA) 313 rule and amend the reporting requirements for 326 IAC 2-6-4(a)(31) hydrochloric acid (CAS Number 0747010) to require only acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size to be reported. (NSC)

Response: SARA Section 313 uses the term "hydrochloric acid aerosols" to indicate airborne forms of hydrochloric acid. Since the emission reporting rule only requires reporting of air emissions, it is not necessary to make this change. Excluding nonareosols is important for Section 313 because of the reporting thresholds for manufacturing, processing, or otherwise using a listed chemical.

Comment: The requirement to include the UTM or latitude and longitude coordinates of each stack is excessive. To that end, the provisions of 326 IAC 2-6-4(b)(8) should be modified to also indicate that nothing in this rule should force surveying of the source's stack location to determine the latitude and longitude or UTM coordinates. (BSC) (CCI) (ECC) (EL) (GCC) (KFG) (KI) (KTC) (NS) (QI) (RPL)

Response: Collection of UTM information is an agency-wide initiative for use in all databases. Specifically, modeling cannot be performed without this information. It would be impossible to link monitoring and modeling without it. This UTM information is easily obtained and only has to be provided as part of the emission reporting requirements once. The Department can assist sources in obtaining this information. This requirement can also be lessened by grouping stacks as discussed under previous comments.

Comment: One of the most burdensome provisions of the proposed rule is the requirement in 326 IAC 2-6-4(b)(3) to require sources to provide throughput, operating schedules, and capacity information for each "emission unit" which has been interpreted as each piece of equipment in a pharmaceutical manufacturing operation. In the past, we have provided this information at a much higher level, typically by production building, which might contain dozens of individual emission units, or for large individual units such as boilers and incinerators. (EL) (KI)

Comment: The current rule provides a source with significant discretion for how it reports emissions and other data. In the past, GE has reported emissions and other data for each production building (which can contain dozens of emissions units) or for large individual emission units such as boilers. The rule should allow us to continue with this practice. We believe this approach provides IDEM with an appropriate level of detail while minimizing the burden or preparing this report each year. (GEP)

Response: The Department understands this concern and will continue to work with the companies to define "process" and "emission unit" for the emission reporting rule.

Comment: The requirement to report emissions "by process" is overly burdensome and complicated for our facilities. If we are required to report emissions of sixty-four (64) different pollutants for thirty (30) to fifty (50) different processes, the level of emissions information becomes so detailed that it is very costly to us. (EL) (KI)

Response: IDEM will continue to discuss with interested stakeholders the level of emissions information needed.

Comment: The "insignificant activities" currently exempt by the Title V and FESOP rules would now fall under this reporting requirement. It would be extremely problematic to sign the permit required compliance certifications without *de minimis* exemptions. (FC)

Response: The emissions from insignificant activities listed at 326 IAC 2-7-1(21) are exempted from the applicability and reporting thresholds of the emissions reporting by this draft rule.

Comment: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) reportable quantities (RQ) should be used as a guideline for rating risks of the HAP chemicals. A HAP chemical with a CERCLA RQ of one (1) pound would have a much lower *de minimis* quantity than a HAP chemical with an RQ of one thousand (1000) pounds. (NSC)

Response: The CERCLA reportable quantities were developed to establish a level at which a release to all media of the environment should be reported. Data generated through TRI reporting are not sufficient to address the stated needs that serve as the basis for this draft rule revision. IDEM has included no minimum reporting levels for dioxin, lead, and mercury in the revised draft rule.

Comment: As proposed, the rule will require that Purdue report emissions data and operating information for "each emission unit". There are over one thousand one hundred (1,100) laboratory fume hoods, associated with research and teaching laboratories, at the Purdue West Lafayette campus that have the potential to emit regulated air pollutants. In addition, Purdue has numerous other activities that are defined as insignificant activities or trivial activities under the Title V rule (326 IAC 2-7). Purdue believes that there is little benefit to quantifying emissions from these activities compared to the level of effort that would be required to obtain all information necessary for such sources. On the basis of this concern, Purdue requests that 326 IAC 2-6-1, as currently drafted, be revised to incorporate exemptions from reporting requirements for activities that meet the definition of an insignificant activity or a trivial activity under 326 IAC 2-7 or are exempt from permitting rules under 326 IAC 2-1.1-3. (PU)

Response: Emissions from insignificant and trivial activities are exempted from the reporting requirements of this draft rule. The language has been changed to repeat this exemption from 326 IAC 2-7-1(21) and (40).

Comment: De minimis reporting levels already exist in the current 326 IAC 2-6 rule as stated in 326 IAC 2-7-1(21)(J). Neither emissions from trivial activities nor emissions from insignificant activities, as those terms are defined in 326 2-7-1, need be included in the emission report. GE suggest that this concept be placed directly in 326 IAC 2-6 to ensure the regulated community is aware of this provision. (GEP) (IPL)

Comment: The proposed rule should specify reporting levels for all pollutants, and particularly for hazardous air pollutants (HAPs). Absolutely no reason exists for requiring the reporting of *de minimis* levels of emissions, including HAPs. The Title V regulation already recognizes this fact and exempts emission reporting for insignificant and trivial activities. 326 IAC 2-6-4(b)(5)(F) should be added to read " HAP information is not required for any stack unless the emission rate exceeds one ton per year". (BSC) (CCI) (ECC) (GCC) (KFG) (KTC) (QI) (RPL)

Comment: In the draft rule 326 IAC 2-6-4, there are no *de minimis* reporting levels. This increases the reporting burden of most operating facilities, due to trace amount of HAP in chemicals, both HAP and non-regulated chemicals. Emissions of a gas hot water heater used for a process would now have to be reported and the fuel usage measured. (NSC)

Comment: A more important *de minimis* consideration is the concentration of a HAP. Using the OSHA definitions, HAP *de minimis* concentrations would be one percent (1%) for HAPs, while carcinogens would be one tenth percent (0.1%). Since this needs to be tracked by OSHA, it is a reasonable *de minimis* concentration for plants to track. (NSC)

Comment: Consideration should be given to establishing a *de minimis* reporting level of five (5) tons of actual emissions (to be consistent with the 313 reporting threshold of ten thousand (10,000 pounds) unless there is a compelling, demonstrated health-based justification for a lower reporting level. (APG) (CII)

Comment: Without appropriate *de minimis* reporting levels, insignificant activities currently exempted under the Title V program and FESOPs would be subject to reporting under the proposed amendments. However, without first establishing reliable and appropriate emission factors, it will be impossible to develop reasonable *de minimis* reporting levels for specific source processes. (SPI)

Comment: We strongly believe that the agency must include reasonable *de minimis* reporting levels for the HAP reporting in the proposed rule. We believe a consistent ten (10) ton threshold per reporting unit is an appropriate level for most of the HAPs listed. (BP)

Comment: Kimball is concerned with IDEM's proposed changes to the *de minimis* reporting levels for HAPs. Kimball reports its criteria pollutant emissions to no more than two significant decimal places one hundredth (0.01) ton. It is not realistic to certify emissions below that level. (KI)

Comment: The approach of the rule will make this rule overly burdensome to the regulated community. The current draft rule language requires that all sources report emissions of all of the pollutants on the list without regard to the quantity emitted. Citizens Gas and Coke Utility recommends that the agency establish *de minimus*

reporting thresholds that are no less than one hundredth (0.01) ton or twenty (20) pounds for each regulated pollutant. (CGCU)

Comment: GE recommends that an absolute *de minimis* level of one hundred (100) pounds or five hundredths (0.05) ton be created, so that any pollutant whose source wide emissions are less that one hundred (100) pounds per year, regardless of whether the activity generating the emissions is "trivial" or insignificant", need not be included in the emissions report. The figure of one hundred (100) pounds reflects new reporting thresholds under the SARA Toxics Release Inventory (TRI) program for some pollutants characterized a persistent, bioaccumulative, or toxic (GEP)

Comment: 326 IAC 2-6-4(a) should be modified to establish a *de minimis* emission threshold level for reporting emissions, especially for the additional emissions beyond the criteria pollutants. A pollutant specific *de minimis* level for each of the listed HAPs should be specified. (NS)

Comment: If IDEM chooses to go forward with this proposal, reasonable reporting thresholds for each individual HAP should be developed. (AEP)

Comment: IDEM should set *de minimis* levels for each listed HAP. (NSC)

Comment: The rule should contain *de minimis* emission rates for each pollutant. The insignificant activity thresholds are an appropriate starting point for emission reporting thresholds. (EL) (KI)

Comment: A lack of reasonable and appropriate *de minimis* reporting levels for listed HAPs reporting thresholds creates a situation where every Title V and FESOP source could potentially be in violation of this rule. (FC) (IMA)

Response: De minimis reporting levels were not included in the draft rule to encourage comment on this issue. The Department agrees that *de minimis* reporting levels are appropriate. The draft rule language has been revised to include *de minimis* reporting levels. The current IDEM policy for reporting levels is to the nearest one hundredth (0.01) ton per year. Dioxin, lead, and mercury have no minimum reporting levels.

Comment: Another issue raised by the proposed amendments is the requirement in 326 IAC 2-6-4(B)(5)(D) that sources only use emission factors approved by IDEM. Even if IDEM were somehow able to approve every possible factor, the agency does not have a system for communicating to regulated companies which factors and estimation techniques are approved. The system in the current rule, which allows site-specific factors, if "accepted" by IDEM and EPA is the only practical approach. (EL) (GEP) (KI)

Comment: IPL recommends that the rule require only IDEM approval for such emission factor use due to the excessive amount of time it would take U.S. EPA to review and approve such emission factors. IPL believes emission factors developed by the Electric Power Research Institute (EPRI) should not be required to undergo scrutiny by IDEM and U.S. EPA since such emission factors are subject to extensive scientific peer review prior to being issued for industry use. (IPL)

Comment: There is a problem of few emission factors for trace HAP chemicals in manufacturing processes. (NSC)

Comment: A different approach to deal with low level emissions, or for pollutants where emission estimates are imprecise because of the lack of good emission data or emission factors, would be for the rule to allow a source to report some emissions in ranges. For some pollutants, reporting in ranges may be the only feasible means to report. (EL) (KI)

Response: IDEM agrees that emissions calculation methods for this draft rule are a concern and will continue to discuss the issue with interested stakeholders.

Comment: Requiring reporting of VOCs and HAPs would result in duplicative reporting and "double counting " of emissions. Some HAPs proposed for reporting, such as perchloroethytlene, would not likely be emitted by Title V or FESOP sources, but rather by area sources. (FC)

Comment: IDEM should clarify that any HAP that is also a VOC or particulate and which has been historically included in these reported emissions would be excluded from fee calculations. These HAPs should be excluded from the fee calculation by rule or the sources should be allowed to report them separately from the particulate or VOC emissions in which they have been previously included. (AEP)

Response: IDEM will subtract VOC HAPs and PM_{10} HAPs from the total VOC and PM_{10} emissions for purposes of billing.

Comment: It should be noted that a given affected source may not be capable of emitting all of the listed pollutants and therefore, emissions reporting should be limited to only those pollutants for which the affected source can be expected to emit and for which reliable emission factors exist to calculate emissions. (IPL)

Response: If a pollutant is below a *de minimis* level or not emitted at all, it does not have to be reported. IDEM will continue to discuss these issues with interested stake holders.

Comment: AEP does not believe that sources not regulated for a specific HAP should be required to report a HAP under this rule. While some sources are required to report various substances, for which they are not regulated under the TRI rules, many of these values are estimates or ranges. Such estimates that are permissible under the TRI rules are not generally useful in generating emission inventory grade data, but are sufficient for facilities reporting substances for which they are not regulated under the TRI program. (AEP)

Response: IDEM will continue to discuss the issue of specific HAPs that sources will be required to report.

Comment: 326 IAC 2-6-4(a) should be revised as follow: "A source subject to this rule shall report actual emissions of the following pollutants emitted by that source in the emission statement where applicable:". (IPL)

Response: The word "actual" will be inserted in 326 IAC 2-6-4(a), but IDEM is not sure about what is meant by "where applicable" and has not included it.

Comment: The reference in 326 IAC 2-6-3(e) to subdivision "4(c)(1)" is incorrect. It should be to subdivision "4(b)(1)". (GEP)

Response: The draft rule has been revised and the appropriate reference has been inserted.

Comment: The phrase "those 326 IAC 2-7 sources" in the second sentence of 326 IAC 2-6-3(a) is not needed and should be deleted. (EL) (KI)

Response: Title V and FESOP sources in nonattainment and maintenance counties are required to submit an emission statement annually. However, that subsection has been revised for clarity.

Comment: The term "regulated" should be inserted between "following" and "pollutants" in the first line of 326 IAC 2-6-4(a). (EL) (KI)

Response: All of the pollutants included for reporting are listed in the Clean Air Act but may not yet have standards promulgated for them. The department would like to work with interested parties to develop language for this section.

Comment: The last sentence of 326 IAC 2-6-4(b)(1) should be deleted since this provision is reiterated in 326 IAC 2-6-5. (EL) (KI)

Response: 326 IAC 2-6-4(b)(1) gives specific information about the certification and 326 IAC 2-6-5 states that failure to comply with any provision of the rule is a violation. IDEM does not believe these two parts of the rule are the same.

Comment: 326 IAC 2-6-4(b)(5)(A) should include clarifying language about downtime to indicate the equipment downtime and also the time the process is not operating. (NS)

Response: The definition of "downtime" has been reworded.

Comment: 326 IAC 2-6-4(a)(4) should be modified to be consistent

with the definition of PM_{10} (particulate matter less than or equal to ten (10) microns in diameter). (NS)

Response: The draft rule has been changed to include "or equal to".

Comment: The footnote to the list of sixty four (64) pollutants is vague and ambiguous. To clarify this footnote, GE suggests the language be revised to read: "The following applies to the listings that contain the word 'compound'. Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (for example, antimony or arsenic) as part of that chemical's structure." (GEP)

Response: IDEM agrees and the draft rule has been changed.

Comment: The reporting should be based on emissions from stacks, not from processes or emission units. 326 IAC 2-6-4(b)(3) should be changed to read "Operating data, to include for each stack the following:" 326 IAC 2-6-4(b)(3)(G) should be changed to read "Annual fuel or process weight and units." The first sentence of 326 IAC 2-6-4(b)(5)(A) should read "The estimated actual emission of all pollutants listed in subsection (a) at the stack level in tons per year." (BSC) (ECC) (GCC) (KFG) (KTC)

Response: IDEM disagrees. Information is entered from the emission process level and the data processing system summarizes stack emissions.

Comment: In regard to clause 326 IAC 2-6-4(b)(5)(A), IPL requests that IDEM provide guidance on how to calculate actual emissions of applicable pollutants for unit malfunctions, start-up and shutdown operations, fugitive emissions, and unit downtime since it is not clear how pollutant emissions for such activities should be calculated for a given source category. (IPL)

Response: The Department will assist in calculating emissions for unit malfunctions, start-ups and shutdown operations, fugitive emissions, and unit downtime.

Comment: Clause 326 IAC 2-6-4(b)(5)(B) indicates that emissions of VOC and PM_{10} shall be reported as total VOC or PM_{10} emissions. IPL interprets this requirement to include both solid and condensable fractions of PM_{10} emissions. IPL requests that IDEM confirm this understanding. (IPL)

Response: IDEM agrees with this interpretation.

Comment: IPL understands that the "stack gas exit temperature" listed in clause 326 IAC 2-6-4(b)(4)(D) has units of degrees Fahrenheit and should be reflected in the rule as such. (IPL)

Response: IDEM agrees and the draft rule has been changed.

Comment: IPL recommends that the "plume height" parameter listed in clause 326 IAC 2-6-4(b)(4)(B) should be deleted since that parameter is not really a primary stack parameter, but a function of stack height, stack exit diameter, stack volumetric flow rate, and stack gas exit temperature. (IPL)

Response: IDEM agrees and "plume height" has been deleted from 326 IAC 2-6-4(b)(4)(B).

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 12, 2001, the air pollution control board conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 2-6. Comments were made by the following parties:

BP Amoco Oil, BP
Citizens Gas and Coke Utility, CGCU
Citizens Thermal Energy, CTE
Eli Lilly and Company, ELC
General Electric Company, GE
Improving Kids Environment, IKE
Indiana Cast Metals Association, INCMA
Indiana Chamber of Commerce, ICC
Indiana Manufacturers Association, IMA
Indiana Petroleum Council, IPC
Indianapolis Coke, IC
Jim Hauck, JH
Milestone Contractors, L.P., MCLP
Monaco Coach Corporation, MCC
Stephen Loeschner, SL
Utilimaster Corporation, UC

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Quality information is a critical tool to sound decision making. It is also essential to fulfill the public's right to know about the air emissions in their community. This draft rule fills serious gaps in the current regulations in a reasonable manner that balances the potential burden of the rule without compromising the quality of the information. (IKE) (SL)

Response: IDEM agrees that this information is valuable and is attempting to balance the needs of obtaining information necessary for establishing good public health policy with reporting requirements that can be reasonably met by industry.

Comment: The Board needs to contemplate whether or not to mandate a broad and extensive reporting scheme that becomes a regulatory compliance obligation for about fifteen hundred (1500) sources in the state on a regular basis. About five hundred (500) FESOP sources would report every three years and about one thousand (1000) Title V sources would report annually. It is a broad expansion of the program. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: While the number of pollutants to be reported will increase, IDEM does not agree that the number of sources affected by the proposed rule would expand significantly because the proposed rule would exempt about three hundred (300) small sources. IDEM has tried to draft the rule so that the pollutants to be reported, the level to be reported and the sources affected are consistent with the objectives of this rulemaking. We recognize the concerns raised and are currently evaluating ways to simplify reporting for sources newly affected by the emission reporting requirements.

Comment: IDEM should initiate a coherent work group to try to work through the issues of the draft emission reporting rule. (ICMA)

Comment: IDEM should sit down with interested stakeholders to work out the remaining issues with the rule. (MCC)

Comment: IDEM staff has extended extra efforts to inform the public and the regulated community about the rule and engage them in the process of refining the rule. (IKE) (SL)

Comment: The timing of public meetings has been backwards. There were no external discussions with interested stakeholders before the draft rule was published on February 1, 2001. By that time, IDEM already knew exactly what it wanted and had already committed policies and concepts to rule language. We do not think that is the appropriate way to conduct a rulemaking with a significant change in public policy. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: IDEM is aware that this rulemaking raises substantive policy issues that warrant discussion and has held meetings in Indianapolis and Goshen and will be meeting with interested parties concerning this rule. IDEM will hold additional meetings, that all interested parties may attend, and will be available to meet individually with businesses and the public prior to taking the proposed rule to the board with a recommendation to final adopt.

Comment: The sunset legislation should not be the reason for this draft rule, which is substantially different than the current rule, being on a fast track. (BP) (IPC) (JH)

Comment: We have not received responses to the public comments that were submitted in March. There is not enough foresight and

enough thought being given to this draft rule. It is being rushed through the rulemaking process. (MCLP)

Comment: The sunset rule should not be used as an excuse to rush this rule through without adequately addressing the concerns and issues of the regulated community. IDEM has not addressed written comments and there has been no fair negotiations or exchange of information. (MCC)

Comment: The First Notice of Comment Period was published on November 1, 1997 and the Second Notice of Comment Period was published on February 1, 2001. During this time, there were no public meetings or workshops to discuss specific issues with interested parties. From February 1, 2001 to final adoption on August 1, 2001, the rulemaking process speeds up and there is not enough time for discussions of the policy questions. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCC) (MCLP) (UC)

Response: The requirements of the sunset law were a reality not an excuse. With the passage of House Enrolled Act No. 2147, IDEM and interested parties have more time to work through the policy issues. The responses to comments received during the second comment period are included with the April 12, 2001 board packet materials and are also included with this proposed rule.

Comment: IDEM should first; understand what is the purpose of the information being requested; second, identify the appropriate, accurate detail and timeliness of that information; and third, suggest alternative, less burdensome ways for IDEM to obtain the proper information in a fair manner. (ICC)

Response: There are numerous uses for the information and data required to be submitted to IDEM by the emission reporting rule. The data currently are used for public information, Title V billing, analysis of long-term air quality trends, evaluation of effectiveness of control strategies by comparison to monitored data, determination of types of processes emitting pollutants of interest, and air quality modeling for several types of permits and state implementation plans (SIPs). Our knowledge of the concentrations and effects of toxic pollutants is limited at this time. The information collected in the future will be used as above, with additional cumulative exposure modeling, risk analysis, and comparisons to newly installed and future toxic monitoring sites.

As an example of the uses for data, the information currently being collected for criteria pollutants is used for SIP and permit modeling. In the last three to four years, modeling has been performed to support permit conditions for major sources in at least twenty-five counties, many of which require inclusion of information from outside counties in the areas of influence. There has been state-wide modeling of all sources for the NO_x rule. It appears that there will again be state-wide modeling required for the 8-hour ozone and regional haze/fine particulate standards. All of these projects require stack parameter, locational, and process information to produce meaningful results. Indiana data are also used by other states and the U.S. EPA for similar projects.

IDEM is open to alternative suggestions for collecting this information, including a provision that sources provide information upon request to the department rather than on a regular schedule. In the above example, while the locational and stack information is necessary, it is only required to be submitted once, as long as the processes and physical configurations remain the same. For yearly reports, only the production information would need to be updated. The software performs the calculations that provide updated emissions for yearly trends analysis and billing, among other uses.

Comment: What are the benefits to the environment and the citizens of Indiana from this rule? (MCC) (UC)

Comment: This draft rule will impose burdensome, expensive and unnecessary demands on industry, with little, if any, environmental benefits. (ICC)

Response: IDEM is charged with protecting the public health and the environment. That effort can only begin with an accurate understanding of what pollutants are in the ambient air and which sources are emitting them. Among the ways it can do this is to collect information regarding emissions to provide reports to the public or for comparing with monitored data. IDEM recently started the toxics monitoring program; this information will be used to better understand causes of any high toxics concentrations.

An example of the need for the level of detail required in this draft rule is the NO_x SIP Call rule. This could be one of the most beneficial air pollution control rules created to protect public health in many years. Few people envisioned the need for NO_x emissions data for the NO_x SIP Call rule when the emission reporting rule was adopted. The resulting stack and locational information that was collected for criteria pollutants enabled agencies across the U.S. to model the problem and propose solutions. The process information allowed the regulating agencies to determine important sources of pollution and ensured the ability to estimate cost effectiveness of various controls for specific processes. These types of analyses will continue to be performed for toxic compounds, the new 8-hour ozone standard, and fine particulate. IDEM welcomes alternative specific suggestions for ways to collect this information that would be less burdensome to affected sources.

Comment: EPA has been establishing hazardous air pollutants (HAPs) requirements for many industries under the maximum achievable control technology (MACT) program, which regulates the highest priority sources, thus IDEM is looking to regulate the sources that are left. IDEM could use other data to identify the emissions that the MACT rules are not hitting. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: IDEM agrees that U.S. EPA is responsible for developing federal standards for all major sources of HAPs. However, to date, the federal toxics program, as amended in the 1990 Clean Air Act, has not prioritized sources based on the pollutants that they emit but rather on the ability to develop a technology-based standard. The data collected through HAP emission reporting will allow Indiana to identify gaps in the federal program that need to be addressed to adequately protect the public health and environment of all Indiana citizens. Because the MACT standards themselves are based upon old and sometimes inaccurate data, it is clear that U.S. EPA has not identified other sources of data, including Toxic Release Inventory (TRI), to fill in the information gaps. Process-level emission reporting by sources of the pollutants is the most reliable mechanism for collecting this data.

Comment: The rule should be extended to incorporate, at a minimum, the one hundred eighty-eight (188) chemicals that are listed in the Clean Air Act Amendments of 1990. (SL)

Comment: The Toxic Release Inventory (TRI) does not combine the base metal with the metal compounds because the hazards of the base metal are quite different. Where TRI makes a distinction, so should the emission reporting rule. (IKE) (SL)

Comment: Since the mid 1980's, new sources have had to evaluate their emissions of particularly hazardous, non-criteria pollutants that are listed in 326 IAC 2-2-1(w). Most of these non-criteria pollutants are included in the list to report, but asbestos, fluorides, (sodium fluoride and sodium aluminum fluoride), sulfuric acid mist, and hydrogen sulfide should be added. (IKE) (SL)

Response: While including all one hundred eighty-eight (188) hazardous air pollutants, as identified in the Clean Air Act, would make rule development simpler, IDEM has opted to identify a subset of those HAPs that are most important to the public health and environment of Indiana citizens. The methodologies for establishing the list of pollutants added to the proposed rule have been previously discussed (See 24 IR 1462.) IDEM agrees to review the pollutants

specifically regulated under the Prevention of Significant Deterioration (PSD) program and whether the base metals should be listed separately from the metal compounds consistent with TRI.

Comment: The rule is too vague about the basis upon which an authorized individual is allowed to make an estimate. IDEM should consider using the TRI "best estimate" requirement. (IKE) (SL)

Comment: Do we have to use preapproved methods from IDEM and EPA to calculate emissions data or can we use methods that we think are the best technique? (BP) (CGCU) (CTE) (ELC) (GE) (IC) (ICMA) (IMA) (IPC) (JH) (MCLP)

Comment: We question the validity of inventory data based on poorly rated available emissions factors. IDEM should develop a policy which addresses the use of emission factor data related to poorly rated emission factors. According to the draft rule, continuous emissions monitoring (CEM) data which is site specific must be accepted by IDEM and EPA. This acceptance would add additional and unnecessary administrative burdens to both the regulated sources and to the agency. (CGCU) (CTE) (IC)

Response: There are a variety of contexts in which emissions calculations require the use of emission factors. Through AP-42 and other published sources, U.S. EPA has provided standard factors for many industrial sources. The use of standard factors, where they are appropriate, is desirable because it enhances the consistency of data from source to source and across the country. Both U.S. EPA and IDEM recognize, however, that in some cases standard factors are not adequate. According to EPA guidance, (Introduction, AP-42, 1995) "The three principal methods for estimating emissions are source tests, material balances, and emission factors. If none of these three methods can be employed to estimate emissions for a specific process, an approximation or engineering estimate based on available process, physical, chemical, and emission knowledge may be used." IDEM will continue to follow this guidance, as it currently does, and will modify the rule language to clarify the use of emissions factors. IDEM has also developed a nonrule policy document, Air-014-NPD, that includes procedures and validation requirements for approval of alternate emission factors.

Comment: The detailed emission unit reporting in the draft rule should be kept, but many operations have hundreds of small emission units. To reduce the reporting burden without sacrificing information, IDEM might consider methods to allow combination of small, related units. (IKE) (SL)

Comment: One provision of the draft rule that is a move in the right direction, is the exclusion of insignificant and trivial activities. However, by requesting detailed stack information for each process, which means we can no longer group similar processes with identical emissions, the IDEM totally negates any gains made. (UC)

Response: The draft language does not yet allow for such combining, but IDEM is reviewing language to clarify any confusion about combining like emission units, processes, and stacks and is considering defining an "emission reporting group" for this purpose.

Comment: A *de minimis* for reporting should be included in the rule. The definition of insignificant sources in the Title V rule for laboratories and similar sources might form a basis of a *de minimis*. (IKE) (SL)

Comment: A twenty (20) pound per year *de minimis* level is simply ludicrous. This is equivalent to less than one hundredths percent (0.01%) of a major source's emissions or one tenth percent (0.1%) for a HAP major source. IDEM has provided no justification for such an insignificant reporting threshold and seems to give no consideration to the burden it will place on industry. Consideration should be given to establishing a *de minimis* reporting level of five tons (consistent with the TRI reporting threshold of ten thousand (10,000) pounds) unless there is a compelling, demonstrated health-based justification for a lower reporting level. (MCC)

Comment: A *de minimis* reporting level of twenty pounds per year is too low. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: IDEM received comments during the second comment period that included recommendations for establishing *de minimis* levels ranging from twenty thousand (20,000) pounds to twenty (20) pounds. IDEM proposed twenty (20) pounds as the *de minimis* level for all pollutants except dioxin, mercury and lead (which had no *de minimis* levels) in the draft rule. The twenty (20) pound *de minimis* level was chosen for the following reasons: many of the listed HAPs are known or possible carcinogens, or are persistent, bioaccumulative toxic chemicals that can have significant impacts on human health at extremely low levels and therefore warrant a low *de minimis* reporting level. Certain companies commented that twenty (20) pounds was a reasonable *de minimis* level; and twenty (20) pounds is consistent with IDEM's current policy for reporting of criteria pollutants. IDEM welcomes comments on the issue of establishing higher *de minimis* levels for certain HAPs. Specific feedback would be helpful on which HAPs need higher *de minimis* levels, the basis for why the *de minimis* levels should be raised, what the new *de minimis* levels should be, and how the proposed levels were derived.

Comment: Having just finished with our company's emission statement yesterday, the details and workings of this rule are very fresh in my mind. Next week, I will complete our first quarter compliance report required by our Part 70 permit. While this report only covers the first quarter emissions, essentially I am supplying IDEM with identical information twice in the span of one week. The IDEM needs to produce hard evidence as to why the information requested cannot be extrapolated from existing files and other reporting requirements. With a twelve (12) month rolling average provision, a source's fourth quarter air permit compliance report will provide all necessary information related to emission amounts and can be used for fee billing. (UC)

Comment: FESOP sources submit periodic compliance reports and IDEM can take that data and convert it to emissions information just as easily as a source would. The FESOP information that IDEM has in the permit applications and compliance reports can be converted by IDEM to emission estimates. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: IDEM agrees that the rule should avoid duplication of efforts. However, in the case of many FESOPs, the reporting requirements do not clearly translate to emissions information, and IDEM is currently evaluating ways to simplify reporting for FESOP sources.

While IDEM understands the commenter's frustration with Title V reporting, a source has the information readily available and should have little difficulty in complying with the annual emission statement requirement because the quarterly compliance information has already been assembled.

Comment: Recognizing that the level of detail may be a concern, IDEM should adopt the amended draft rule, and then continue to work to refine the rule language. (IKE) (SL)

Response: IDEM will continue to work with the affected sources on the best way to gather the emissions information.

Comment: IDEM should readopt the existing rule. There are some flaws with the way that the process has moved, and there are significant concerns about the technical aspects of the draft rule. (BP) (ELC) (GE) (ICC) (ICMA) (IMA) (IPC) (JH) (MCC) (MCLP) (UC)

Response: IDEM does not agree that the existing rule should be readopted. With additional discussion among interested parties, IDEM believes that the rule can be improved in a number of respects and will continue to work toward that end.

Comment: There is no federal mandate to gather the information in the draft rule. IDEM should wait until U.S. EPA final adopts the Consolidated Emissions Reporting Rule (CERR). (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: It is true that there is not a specific federal mandate to collect HAP information, but the Clean Air Act and federal regulations require the reporting of certain criteria pollutants. The purpose of the proposed CERR is to improve and simplify emissions reporting by states to U.S. EPA. However, it is uncertain when U.S. EPA will complete the CERR or if toxics reporting will be included. If a federal rule is ultimately finalized that contains requirements that go beyond or are inconsistent with Indiana's rule, IDEM would start the process to consider any appropriate or necessary amendments to the rule.

Comment: A large issue with the amended rule is that requesting this information to this level of detail places an overwhelming burden on those companies affected, without this additional information serving the IDEM or the citizen's of Indiana. Without this rule even existing, IDEM currently has between its permit files, air permit reporting requirements, and Toxic Release Inventory (TRI) reports, all the significant information they are requesting via the emission statement. (UC)

Comment: The process level and stack information required by the draft rule is more detail than necessary and is not needed by the public or IDEM programs. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCC) (MCLP)

Response: While TRI, permits, and compliance reports contain certain information and serve their own purposes, they do not allow for the development of emission inventories as do process level estimates of actual emissions. TRI and compliance reports are source-wide emission estimates, making it difficult to assign these emissions to processes for policy and regulatory analysis. Permits are based on potential emissions. These are estimates that are rarely representative of the actual emissions from the source. Only with process level data can IDEM make sound policy decisions based on real world information.

Comment: Stack information and facility and emission unit operating information, as requested in the draft rule, is already sitting in the IDEM files on all emission sources at a permitted facility. The emission statement rule is duplicative of other information submitted to IDEM and should be eliminated. (UC)

Comment: Title V permit applications have given IDEM a significant amount of detail about stack information which could be used for modeling. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Comment: We offered written comments about using generic terms instead of stack specific terms. IDEM's response was inadequate. It has been extremely frustrating to work with IDEM on the development of different, simpler approaches in which they could obtain the desired information. How stack information has any relevancy to public access to information, program effectiveness evaluations, or fee billing, is hard to see. (MCC)

Response: Many of the affected sources have already submitted stack information using the STEPS software. Once in the database, there is no need to change or re-enter this information on a yearly basis. This information will continue to be carried over as the program is expanded to new pollutants. New stack and process information will need to be added if the new pollutants to be reported are generated from processes not previously included in emission statements.

As noted in earlier responses, the requested information is used for a variety of programs, not just billing and IDEM is attempting to determine how to combine reports from companies so that the various programs' needs are met while reducing the reporting burden to the companies. The information supplied by sources in permit applications may not accurately describe what actually was built at the source. IDEM welcomes specific ideas for combining or eliminating duplicative or similar reports.

Although generic terms instead of stack specific terms are useful for some modeling protocols, IDEM believes that more specific information is needed to meet the stated goals of collecting HAP emissions information.

Comment: Major sources contribute about thirty percent (30%) of the hazardous air pollutant emissions in Indiana, and those are the ones who would be the primary reporters under the draft rule. So, seventy percent (70%) of the hazardous air pollutant emissions in Indiana are not even addressed or collected under this rulemaking. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: The majority of HAP emissions, not just in Indiana but throughout the country, come from mobile sources. However, the contributions from point sources is not insignificant. Understanding point source contributions and effective emission reduction strategies are important. Reasonably accurate methodologies exist to estimate emissions from mobile sources and small stationary sources. Major sources, by definition, emit at levels greater than ten (10) tons per year or more of HAP. Many major sources in Indiana emit HAPs at levels greater than one thousand (1,000) tons per year. IDEM believes that having good information on the processes responsible for such large contributions of HAPs is sound public health and environmental policy.

Comment: Hazardous air pollutants (HAP), which are being requested as a mandatory inclusion on the emission statement, are covered by Toxic Release Inventory (TRI) reports. (UC)

Comment: IDEM's proposal to require additional information be reported on HAP is not warranted. Most of the information being requested is already provided to IDEM in TRI reports. The entire list of the additional fifty eight (58) chemicals should be deleted from the reporting rule. (MCC)

Comment: Many of the objectives that IDEM has for this draft rule, such as planning and evaluation of other rules, can be satisfied by existing data supplies, primarily the TRI program. The information submitted in the TRI reports can be extracted many ways such as significant emitters of a particular pollutant and trends. IDEM could ask for additional process level information if needed rather than a year to year reporting requirement. Another source of information on the Internet is the National Air Toxics Assessment (NATA) database. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Comment: As a user of the information, the TRI information is limiting because it is so general, it is facility wide, there is a relatively high threshold, and there are a lot of gaps in the information that limits its usefulness. Municipalities, nonmanufacturers, and nonutilities do not report even though they may be FESOP sources. (IKE) (SL)

Comment: In doing a bit of research for a citizens group concerning a steel mill, the TRI data could not be trusted. (SL)

Response: IDEM does not agree that TRI data adequately meets the public's or the department's needs. As stated by two commenters, TRI data has limited usefulness. U.S. EPA uses TRI data and state supplied information, if it exists, to develop the inputs for the NATA database. The NATA database contains U.S. EPA's modeled projected average annual concentrations for select HAPs at the county level. One of the reasons to collect additional HAP information in Indiana is to supplement the data used by U.S. EPA to model HAP concentrations.

Comment: Some companies, that are required to submit an emissions statement in the draft rule, are not subject to TRI reporting and have not developed this type of extensive emissions inventory. Sources not submitting a TRI report could be targeted for more information. We request that IDEM develop a targeted list of HAPs by source category that should be reported. Such a targeted list would serve to reduce the administrative burden on affected sources. (CGCU) (CTE) (IC)

Response: IDEM agrees that not every company affected by the draft rule is subject to TRI reporting. One purpose of the draft rule is to collect information that cannot be derived from TRI. IDEM understands the commenters' concerns about reducing the number of HAPs that need to be reported. Also, the rule does establish a *de minimis*

reporting threshold. Therefore, a source would not have to report a pollutant if its emissions fall below the *de minimis* reporting threshold consistent with insignificant activity levels. Many companies will not have to report any additional pollutants.

Comment: As the economy moves more and more to a global setting, Indiana businesses are struggling to compete. The cost of this rule is still being evaluated. Our emission report takes approximately sixty (60) hours to complete. For companies such as Utilimaster, who are large enough to have an environmental person, the cost is absorbed without great difficulty. These emission statements annually cost small and medium size businesses roughly two thousand dollars ($2,000) to three thousand dollars ($3,000) to have completed by an outside consultant. With a profit margin of two percent (2%), a business must them increase sales by one hundred thousand dollars ($100,000) to one hundred fifty thousand dollars ($150,000) to simply cover the cost of this reporting requirement. Larger companies will need thirty percent (30%) to forty percent (40%) more time to complete the statement. These same companies will then again have to increase sales by forty thousand dollars ($40,000) to sixty thousand dollars ($60,000) as a direct result of the amendments to this rule. (UC)

Comment: The cost of reporting emission information required by the draft rule will increase significantly. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Comment: Lilly has estimated at least a tenfold increase in emission reporting costs with the draft rule. The cost estimate for one of our sites to comply with the current rule is ten (10) to twenty (20) thousand dollars a year. A tenfold increase would be one hundred (100) to two hundred thousand dollars for one site, and Lilly has several sites around the state. (ELC)

Response: IDEM appreciates the cost information provided by these comments and will use these cost estimates, with other information, as it evaluates the financial impact of this rulemaking on the regulated community.

Comment: Early reporting places a significant burden on companies and should not be required for frivolous and unsubstantiated reasons. Elkhart County was identified as out of attainment for ozone because of its proximity to St. Joseph County. Since that time, Elkhart County has obtained its own sampler and it has shown continuous compliance with the ozone standard. Elkhart County should be given relief from early reporting and lower reporting thresholds. (MCC)

Response: Elkhart and St. Joseph Counties were designated nonattainment for ozone in 1978 and redesignated to attainment in 1994. The redesignation became possible due to no violation of the ozone standard at any of the monitors in the two counties for three years, adoption of a maintenance plan for ozone attainment in Elkhart and St. Joseph Counties, implementation of Reasonably Available Control Technologies, and emissions reductions resulting from the Federal Motor Vehicle Control Program. The Census Bureau currently has Elkhart and St Joseph Counties listed as separate metropolitan statistical areas, but each county has a substantial urban area with Elkhart County projected to have the biggest percentage increase in population. More people travel into Elkhart County to work than leave to work in other areas. Also, it is important to recognize that emissions from Elkhart County affect the Cassopolis, Michigan monitoring site and exceedances of the eight hour ozone standard at the site require that emissions from Elkhart County be closely tracked.

Comment: IDEM's proposal to extend reporting requirements for all companies with potential emissions over ten (10) tons is not warranted. All reporting thresholds should be set at one hundred (100) tons per year, both for attainment and maintenance areas. (MCC)

Response: The draft rule includes language to raise the reporting threshold for nitrogen oxides (NO_x) and volatile organic compounds (VOC) to twenty-five tons for maintenance counties and to keep the current ten (10) tons reporting threshold for nonattainment counties. Reporting thresholds of one hundred (100) tons per year would not be consistent with Section 182(3)(B)(ii) of the Clean Air Act Amendments of 1990. However, IDEM proposes to exempt Source Specific Operating Agreements (SSOA), permits by rule, and registrations from the emission statement reporting requirements.

Comment: IDEM amended the draft rule to include provisions suggested by a number of commenters that they should and could request additional information from individual sources as deemed appropriate by specific circumstances or concerns. However, this suggestion was provided as an alternative to the level of detail in the draft rule. IDEM accepts that they are able to request additional information if needed, but ignores the primary point that they should not require this burdensome information when a need is not present. (MCC)

Response: IDEM understands that the suggested language was intended to be an alternative to regular required reporting, but believes there is merit in having this type of provision to allow discrete information inquiries. IDEM believes at the specified level of detail that a real need for the requested emissions information exists and has discussed the need in earlier responses. IDEM will continue to work with interested persons on the level of detail established in the rule.

Comment: This draft rule will expand the applicability to approximately one thousand two hundred (1,200) sources. Does IDEM have the resources to manage the additional information? (BP) (ELC) (GE) (ICC) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: Currently, more than one thousand three hundred (1,300) sources report emissions annually. Under the proposed rule, approximately one thousand two hundred (1,200) sources would report during any given year. This is due in part to the exemptions given to smaller sources in the applicability of the proposed and only requiring FESOPs, located in attainment counties, to report every three years. IDEM currently has the resources to manage the proposed rule.

Comment: By law, emissions information is not considered confidential. Some of the information that IDEM is requiring with the draft rule could be considered trade secrets. (BP) (ELC) (GE) (ICMA) (IMA) (IPC) (JH) (MCLP)

Response: Although IC 13-14-11-1 specifically excludes emission data from the trade secrets exemption to public availability of records, IDEM encourages those entities who believe any required information is a trade secret to petition the commissioner to treat such information confidentially pursuant to state law. By submitting a request to the commissioner, a finding will be made and the information may be considered, treated and protected, all or in part, as confidential.

Comment: "Maximum design capacity" needs to be more clearly defined. (IKE) (SL)

Response: IDEM agrees and a clearer definition will be written.

Comment: Why is "maximum design rate" limited to the fuel use? (IKE) (SL)

Response: A decision was made to limit reporting of this parameter to combustion sources, because it is being more readily available for this type of process.

326 IAC 2-6-1
326 IAC 2-6-2
326 IAC 2-6-3
326 IAC 2-6-4
326 IAC 2-6-5

SECTION 1. 326 IAC 2-6-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6-1 Applicability of rule
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule applies to all sources located in the following counties ~~which~~ **that** have the potential to emit volatile organic compounds (VOC) or oxides of nitrogen (NO_x) into the ambient air at levels equal to or greater than ten (10) tons per year **for counties identified in subdivision (1) and twenty five (25) tons per year for counties identified in subdivision (2):**

(1) ~~Clark.~~ **Counties designated as nonattainment of the national ambient air quality standard for ozone according to 40 CFR 81.315, Subpart C, Section 107, Attainment Status Designations, Indiana*.**

(2) ~~Elkhart.~~ **Counties with an approved maintenance plan redesignated to attainment of the national ambient air quality standard for ozone according to 40 CFR 52.777, Subpart P-Indiana, Control strategy: Photochemical oxidants (hydrocarbons)*.**

~~(3) Floyd.~~
~~(4) Lake.~~
~~(5) Marion.~~
~~(6) Porter.~~
~~(7) St. Joseph.~~
~~(8) Vanderburgh.~~

(b) This rule ~~also~~ applies to all sources not covered by subsection (a) ~~which have the potential to emit carbon monoxide (CO), volatile organic compounds (VOC), oxides of nitrogen (NO_x), particulate matter (PM_{10}), or sulfur dioxide (SO_2) into the ambient air at levels equal to or greater than one hundred (100) tons per year.~~ **that are required to have an operating permit under 326 IAC 2-7, Part 70 Permit Program.**

(c) This rule applies to all sources not covered by subsection (a) or (b) ~~which have the potential to emit lead into the ambient air at levels equal to or greater than five (5) tons per year.~~ **that have an operating permit under 326 IAC 2-8, Federally Enforceable State Operating Program.**

(d) ~~If any of the six (6) pollutants listed in subsections (b) and (c) are emitted by a source at levels equal to or greater than the cut-offs set in subsections (a) through (c), then any other emission of a named pollutant by that source must be included in the emission statement even if it is emitted at a level below the applicable cut-offs.~~ **Except for section 4(f) of this rule, this rule does not apply to sources that have any of the following:**

(1) A source specific operating agreement under 326 IAC 2-9.
(2) A permit by rule under 326 IAC 2-10 or 326 IAC 2-11.
(3) A registration under 326 IAC 2-5.5.

***Copies of the Code of Federal Regulations referenced in this article are incorporated by reference and available for copying from the Office of Air Quality, Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana or may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20201.** *(Air Pollution Control Board; 326 IAC 2-6-1; filed Nov 12, 1993, 4:00 p.m.: 17 IR 732)*

SECTION 2. 326 IAC 2-6-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6-2 Definitions
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 2. **For purposes of this rule, the definition given for a term in this rule shall control in any conflict between 326 IAC 1-2 and this rule. In addition to the definitions provided in IC 13-11-2 and 326 IAC 1-2,** the following definitions apply throughout this rule **unless expressly stated otherwise:**

(1) "Actual emissions" means the actual rate of emissions **in tons per year** of ~~a~~ **any** pollutant from an emissions unit for the calendar year. ~~or seasonal period~~.

(2) "Annual process rate" means the actual or estimated annual fuel, process, or solid waste operating rate in ~~an emission statement operating~~ **a calendar** year.

~~(3) "Certifying individual" means the individual responsible for the completion and certification of the emission statement, such as an officer of the company or an employee, and who will take legal responsibility for the accuracy of the emission statement.~~

(3) "Authorized individual" has the meaning set forth in 326 IAC 2-1.1-1(1).

(4) "Capture efficiency" means the percent of the total emissions captured and routed to a control device.

~~(4)~~ **(5)** "Control efficiency" means the ~~actual emission control efficiency achieved by the applicable emission control device(s) during the emission statement operating year.~~ **percent of the emissions routed to a control device that are destroyed or captured by the control device.** The control efficiency ~~shall reflect~~ **includes** control equipment downtime, ~~operation with diminished effectiveness,~~ and any other malfunctions that occurred while the emission ~~source(s)~~ **source or sources** were in operation. If the actual control efficiency during the ~~emission statement operating~~ **calendar** year is unknown or cannot reasonably be predicted from available data, then the efficiency designed by the manufacturer may be used. ~~When the actual control efficiency is unknown, it should be clearly indicated that the designed efficiency, and not the actual efficiency, is being reported. Control efficiency is a measure of how well the device controls emissions; it should not be confused with capture efficiency which reflects how much of the pollutant is routed to the control device.~~

~~(5)~~ **(6)** "Control equipment identification code" means the

~~Aerometric Information Retrieval System (AIRS) or AIRS Facility Subsystem (AFS)~~ code ~~which~~ **provided by the department that** defines the equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutants in an air stream prior to discharge to the ambient air.

~~(6)~~ **(7)** "Downtime" means the period of time when the control device is not operational during the corresponding period of the process **and the process it is controlling is in operation**.

~~(7)~~ **(8)** "Emission factor" means an estimate of the rate at which a pollutant is released to the atmosphere as the result of some activity, divided by the rate of that activity, such as production rate or throughput.

~~(8) "Emission statement operating year" means the twelve (12) consecutive month time period starting December 1 and ending November 30 for those sources that fall within section 1(a) of this rule and the twelve (12) consecutive month period starting January 1 and ending December 31 for those sources that fall within section 1(b) and 1(c) of this rule.~~

(9) "Emissions unit" has the meaning set forth in 326 IAC 1-2-23.5.

~~(9)~~ **(10)** "Estimated emissions method code" means a ~~one (1) position AIRS or AFS~~ code ~~which~~ **provided by the department that** identifies the estimation technique used in the calculation of estimated emissions.

~~(10)~~ **(11)** "Fugitive emission" ~~means releases to the air that are not emitted through stacks, vents, ducts, pipes, or any other confined air stream, including fugitive equipment leaks, evaporative losses from surface impoundments, and releases from building ventilation systems.~~ **has the meaning set forth in 326 IAC 2-7-1(18).**

(12) "Maximum design capacity" means the nameplate capacity less any restrictions on the device due to operational design.

(13) "Maximum nameplate capacity" means the rated design capacity at one hundred percent (100%) operation, as determined by the manufacturer or determined by the owner of the equipment if unavailable from the manufacturer.

(14) "NAICS" means the North American Industry Classification System.

~~(11)~~ **(15)** "Oxides of nitrogen" or "NO_x" means ~~air pollution usage comprised of nitric~~ **all oxides of nitrogen, including, but not limited to, nitrogen** oxide and nitrogen dioxide, **but excluding nitrous oxide, collectively** expressed as molecular weight of nitrogen dioxide.

~~(12) "Peak ozone season" means that contiguous three (3) month period of the year from June through August.~~

~~(13)~~ **(16)** "Percentage annual throughput" means the ~~following:~~

~~(A) The weighted percent of yearly activity for those sources falling under section 1(a) of this rule for the following periods:~~

~~(i) December through February.~~

~~(ii) March through May.~~

~~(iii) June through August.~~

~~(iv) September through November.~~

~~The first season (December through February) will encompass two (2) calender years, such as December 1992 through February 1993.~~

~~(B) The~~ weighted percent of yearly activity ~~for those sources falling under section 1(b) and 1(c) of this rule~~ for the following periods:

~~(i)~~ **(A)** January through March.

~~(ii)~~ **(B)** April through June.

~~(iii)~~ **(C)** July through September.

~~(iv)~~ **(D)** October through December.

~~(14) "Plant" means the total facilities available for production or service.~~

~~(15) "Point" means a physical emission point or process such as a distinct building or a portion of a building within a plant that results in pollutant emissions. A unique identifier (point identification number) exists for each point within each facility in the AIRS database.~~

~~(16)~~ **(17)** "Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable.

(18) "Process" has the meaning set forth in 326 IAC 1-2-58.

~~(17)~~ **(19)** "Process rate" means a quantity per unit time of any raw material or process intermediate consumed, or product generated through the use of any equipment, source operation, or process. For a stationary internal combustion unit or any other fuel burning equipment, this term means the quantity of fuel burned per unit time.

~~(18) "Segment" means components of an emissions point or process, at the level that emissions are calculated. An example of a segment is a boiler burning #2 oil. A unique identifier (segment identification number) exists for each segment within each point and plant in the AIRS database. Each segment is also identified by a source classification code (SCC).~~

~~(19) "SIC code" means the standard industrial classification code. A series of codes devised by the Office of Management and Budget (OMB) to classify establishments according to the type of economic activity in which they are engaged.~~

(20) "Source" has the meaning set forth in 326 IAC 1-2-73.

~~(20)~~ **(21)** "Stack" ~~means a (smoke) stack or vent within a plant where emissions are introduced into the atmosphere. A unique identifier exists for each stack within each facility in the AIRS database.~~ **has the meaning set forth in 326 IAC 1-2-74.**

~~(21) "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any air pollutant subject to regulation under IC 13-1-1.~~

~~(22) "Typical ozone season day" means a day typical of that period of the year during the peak ozone season.~~

(Air Pollution Control Board; 326 IAC 2-6-2; filed Nov 12, 1993, 4:00 p.m.: 17 IR 733)

SECTION 3. 326 IAC 2-6-3 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6-3 Compliance schedule
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 3. (a) The owner or operator of ~~any facility falling within the applicability guidelines set forth in~~ **a source subject to** section 1 of this rule must ~~annually~~ submit an emission statement, **covering the calendar year of the previous year**, to the ~~commissioner. This submittal must be received by the department each year by April 15 for those sources covered by section 1(a) of this rule and by July 1 for those sources covered by section 1(b) and 1(c) of this rule. The submittal should cover the time period as defined in section 2(8) of this rule.~~ **department according to the following schedule:**

(1) Annually, by April 15 for sources subject to section 1(a) of this rule.

(2) Annually, by July 1 for sources subject to section 1(b) of this rule.

(3) Triennially, according to the schedule in subsection (b) for sources subject to section 1(c) of this rule.

(b) The county schedule for reporting under subsection (a)(3) is as follows:

(1) Starting in 2003, and every three (3) years thereafter, sources located in the following counties must submit an emission statement:

(A) Adams County.
(B) Allen County.
(C) Benton County.
(D) Carroll County.
(E) Cass County.
(F) Dekalb County.
(G) Elkhart County.
(H) Fulton County.
(I) Huntington County.
(J) Jasper County.
(K) Kosciusko County.
(L) LaGrange County.
(M) Lake County.
(N) LaPorte County.
(O) Marshall County.
(P) Miami County.
(Q) Newton County.
(R) Noble County.
(S) Porter County.
(T) Pulaski County.
(U) St. Joseph County.
(V) Starke County.
(W) Steuben County.
(X) Wabash County.
(Y) Wells County.
(Z) White County.
(AA) Whitley County.

(2) Starting in 2004, and every three (3) years thereafter, sources located in the following counties must submit an emission statement:

(A) Blackford County.
(B) Boone County.
(C) Clinton County.
(D) Delaware County.
(E) Fayette County.
(F) Fountain County.
(G) Grant County.
(H) Hamilton County.
(I) Hancock County.
(J) Hendricks County.
(K) Henry County.
(L) Howard County.
(M) Jay County.
(N) Johnson County.
(O) Madison County.
(P) Marion County.
(Q) Montgomery County.
(R) Morgan County.
(S) Parke County.
(T) Putnam County.
(U) Randolph County.
(V) Rush County.
(W) Shelby County.
(X) Tippecanoe County.
(Y) Tipton County.
(Z) Union County.
(AA) Warren County.
(BB) Wayne County.

(3) Starting in 2005, and every three (3) years thereafter, sources located in the following counties must submit an emission statement:

(A) Bartholomew County.
(B) Brown County.
(C) Clark County.
(D) Clay County.
(E) Crawford County.
(F) Daviess County.
(G) Dearborn County.
(H) Decatur County.
(I) Dubois County.
(J) Floyd County.
(K) Franklin County.
(L) Gibson County.
(M) Greene County.
(N) Harrison County.
(O) Jackson County.
(P) Jefferson County.
(Q) Jennings County.
(R) Knox County.

(S) Lawrence County.
(T) Martin County.
(U) Monroe County.
(V) Ohio County.
(W) Orange County.
(X) Owen County.
(Y) Perry County.
(Z) Pike County.
(AA) Posey County.
(BB) Ripley County.
(CC) Scott County.
(DD) Spencer County.
(EE) Sullivan County.
(FF) Switzerland County.
(GG) Vermillion County.
(HH) Vigo County.
(II) Warrick County.
(JJ) Washington County.

~~(b)~~ **(c) For sources subject to this rule, the department will provide** emission statement reporting forms, and **any available** guidance ~~will be provided by the department for applicable sources.~~ **documents.**

(d) Sources subject to this rule may submit their emission statement electronically. Sources that submit their emission statement electronically must submit to the department a certification in writing that complies with section 4(e)(1) of this rule by the submission deadline.

(e) Sources subject to reporting pollutants listed in section 4(a)(6) through 4(a)(64) are not required to report those pollutants until 2003 for the calendar year 2002. *(Air Pollution Control Board; 326 IAC 2-6-3; filed Nov 12, 1993, 4:00 p.m.: 17 IR 734)*

SECTION 4. 326 IAC 2-6-4 IS AMENDED TO READ AS FOLLOWS:

326 IAC 2-6-4 Requirements
Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 4. **(a) A source subject to this rule shall report actual emissions of the following pollutants emitted by that source in the emission statement:**
(1) Carbon monoxide (CO).
(2) Volatile organic compounds (VOC).
(3) Oxides of nitrogen (NO_x).
(4) Particulate matter less than or equal to ten (10) microns (PM_{10}).
(5) Sulfur dioxide (SO_2).
(6) Acetaldehyde (CAS Number 00075070).
(7) Acrolein (CAS Number 00107028).
(8) Acrylonitrile (CAS Number 00107131).
(9) Arsenic compounds (inorganic, including arsineTRI category code N020)*.
(10) Benzene (including from gasoline) (CAS Number 00071432).
(11) Beryllium compounds (TRI category code N050)*.
(12) 1,3-Butadiene (CAS Number 00106990).
(13) Cadmium compounds (TRI category code N078)*.
(14) Carbon tetrachloride (CAS Number 00056235).
(15) Carbonyl sulfide (CAS Number 00463581).
(16) Chlorine (CAS Number 07782505).
(17) Chloroform (CAS Number 00067663).
(18) Chromium compounds (TRI category code N090)*.
(19) Cobalt compounds (TRI category code N096)*.
(20) Coke oven emissions.
(21) 1,3-Dichloropropene (CAS Number 00542756).
(22) Diethanolamine (CAS Number 00111422).
(23) Ethylene dibromide (1,2-Dibromoethane) (CAS Number 00106934).
(24) Ethylene dichloride (1,2-Dichloroethane) (CAS Number 00107062).
(25) Ethylene oxide (CAS Number 00075218).
(26) Formaldehyde (CAS Number 00050000).
(27) Glycol ethers (includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R-(OCH_2CH_2)_n-OR_N$ where: n=1, 2, or 3; R= alkyl or aryl groups; and R_N = R, H, or groups which, when removed, yield glycol ethers with the structure $R-(OCH_2CH_2)_n-OH$. Polymers are excluded from the glycol category.) (TRI category code N030).
(28) Hexachlorobenzene (CAS Number 118-74-1).
(29) Hexane (CAS Number 110-54-3).
(30) Hydrazine (CAS Number 00302012).
(31) Hydrochloric acid (CAS Number 07647010).
(32) Hydrogen fluoride (Hydrofluoric acid) (CAS Number 07664393).
(33) Lead compounds (TRI category code 420)*.
(34) Manganese compounds (TRI category code 450)*.
(35) Mercury compounds (TRI category code N458)*.
(36) Methanol (CAS Number 00067561).
(37) Methyl chloride (Chloromethane) (CAS Number 00074873).
(38) Methyl chloroform (1,1,1-Trichloroethane) (CAS 71-55-6).
(39) Methyl ethyl ketone (2-Butanone) (CAS Number 00078933).
(40) Methylene chloride (Dichloromethane) (CAS Number 00075092).
(41) 4-4N Methylenediphenyl diisocyanate (MDI) (CAS Number 00101688).
(42) Naphthalene (CAS Number 00091203).
(43) Nickel compounds (TRI category code N495)*.
(44) Phenol (CAS Number 00108952).
(45) Phosphine (CAS Number 07803512).
(46) Polychlorinated biphenyls (Aroclors) (CAS Number 01336363).
(47) Polycyclic organic matter (POMs) (limited to, or refers to, products from incomplete combustion of

organic compounds (or material) and pyrolysis processes having more than one (1) benzene ring, and that have a boiling point greater than or equal to one hundred (100) degrees Celsius).
(48) Propylene dichloride (1,2-Dichloropropane) (CAS Number 00078875).
(49) Propylene oxide (CAS Number 00075569).
(50) Quinoline (CAS Number 00091225).
(51) Styrene (CAS Number 00100425).
(52) 2,3,7,8-Tetrachlorodibenzo-p-dioxin (CAS Number 01746016).
(53) 1,1,2,2-Tetrachloroethane (CAS Number 00079345).
(54) Tetrachloroethylene (Perchloroethylene) (CAS Number 00127184).
(55) Toluene (CAS Number 00108883).
(56) 2,4-Toluene diisocyanate (CAS Number 00584849).
(57) Trichloroethylene (CAS Number 00079016).
(58) Triethylamine (CAS Number 00121448).
(59) Vinyl chloride (CAS Number 00075014).
(60) Vinylidene chloride (1,1-Dichloroethylene) (CAS Number 00075354).
(61) Xylenes (isomers and mixtures) (CAS Number 01330207).
(62) o-Xylene (CAS Number 00095476).
(63) m-Xylene (CAS Number 00108383).
(64) p-Xylene (CAS Number 00106423).

***Listings that contain the word "compounds", the following applies: unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (for example, antimony or arsenic) as part of that chemical's structure.**

(b) Notwithstanding subsection (a), sources that have an operating permit under 326 IAC 2-8 are required to report only those pollutants for which the source has enforceable limits.

(c) Emission reporting does not apply to insignificant or trivial activities as defined in 326 IAC 2-7-1(21) and 326 IAC 2-7-1(40).

(d) The reporting levels for pollutants listed under subsection (a) are that emissions shall be reported to the nearest one-hundredth (0.01) of a ton per year for each reportable pollutant under subsection (a) pursuant to subsection (e)(5)(D), except for dioxin, lead, and mercury, for which there is no minimum reporting level.

(e) The emission statement submitted by the source must contain, at a minimum, the following information:

(1) Certification ~~that the information contained in the statement is accurate to the best knowledge of the~~ **by an authorized** individual ~~certifying~~ **that** the **information in the emission** statement **is, based on a reasonable inquiry into records and persons responsible for the operation of the source, true, accurate and complete.** The certification shall include the full name, title, signature, date of signature, and telephone number of the ~~certifying individual. The certifying individual shall be employed by the company and shall take legal responsibility for the accuracy of the emission statement.~~ **person signing the certification. Failing to submit or submitting false information is a violation of this rule.**

(2) Source identification information, to include the following:

(A) Full name, physical location, and mailing address of the ~~facility.~~ **source.**

(B) Source **Universal Transverse Mercator (UTM) or** latitude and longitude.

(C) ~~SIC~~ **NAICS** code.

(3) Operating data, to include **for each emission unit** the following:

(A) Percent annual throughput by quarter **for each emission unit. The quarters are as follows:**

~~(i) For those sources falling within section 1(a) of this rule, the quarters are as follows:~~

~~(AA) December through February.~~

~~(BB) March through May.~~

~~(CC) June through August.~~

~~(DD) September through November.~~

~~(ii) For those sources falling within section 1(b) and 1(c) of this rule, the quarters are as follows:~~

~~(AA)~~ **(i)** January through March.

~~(BB)~~ **(ii)** April through June.

~~(CC)~~ **(iii)** July through September.

~~(DD)~~ **(iv)** October through December.

(B) ~~For sources falling within section 1(b) and 1(c) of this rule,~~ The days per week of the normal operating schedule.

(C) ~~For sources falling within within section 1(a) of this rule, the days per week on both the normal operating schedule and on a typical ozone season week, if different from the normal operating schedule. The peak ozone season for Indiana is June through August.~~ **The maximum design capacity for sources subject to 326 IAC 10-3 and 326 IAC 10-4.**

(D) Hours per day during the normal operating schedule.

(E) Hours per year during the normal operating schedule.

(F) ~~For sources falling under section 1(a) of this rule, the weeks of operation during the peak ozone season.~~ **Maximum nameplate capacity for sources subject to 326 IAC 10-3 and 326 IAC 10-4.**

(G) Annual fuel or process weight and units used **for each emission unit**.

(4) Except for sources operating under 326 IAC 2-8, stack parameters associated with each process, including the following:

(A) Stack identification.

(B) Stack height and diameter (in feet).

(C) Universal Transverse Mercator (UTM) or latitude and longitude coordinates.

(D) Exit gas temperature (degrees Fahrenheit).

(E) Exit gas flow rates in cubic feet per minute.

~~(4)~~ **(5)** Emissions information, to include the following:

(A) For sources falling within section 1(b) and 1(c) of this rule, the estimated actual ~~volatile organic compounds, oxides of nitrogen, carbon monoxide, sulfur dioxide, lead, or particulate matter (PM_{10})~~ emissions **of all pollutants listed in subsection (a)** at the ~~segment~~ **process** level in tons per year. ~~for an annual emission rate.~~ Actual emission estimates must include upsets, downtime, and fugitive emissions and must follow an emission estimation method. **If control efficiencies are adjusted because of upsets, downtime, and malfunctions, information must be provided about how the control efficiencies are calculated.**

~~(B) For sources falling within section 1(a) of this rule, the estimated actual volatile organic compounds and oxides of nitrogen emissions at the segment level, in tons per year for an annual emission rate and pounds per day for a typical ozone season day. Actual emission estimates must include upsets, downtime, and fugitive emissions and must follow an emission estimation method.~~

~~(C) Aerometric information retrieval system (AIRS) facility subsystem estimated emissions method code.~~

(B) Emissions of VOC and PM_{10} shall be reported as total VOC or PM_{10} emissions.

~~(D)~~ **(C)** Calendar year for the emissions.

~~(E)~~ **(D)** Emission factor, **which is the ratio relating emissions of a specific pollutant to an activity or material throughput level.** If emissions ~~were~~ **are** calculated using an emission factor, the emission factor ~~must:~~ **shall be approved for use by the department by one (1) of the following methods:**

(i) ~~be one~~ **Emission factors** established in ~~the~~ AP-42, "Compilation of Air Pollutant Emission Factors", Volume 1, ~~Fourth~~ **Fifth** Edition, ~~September 1985*;~~ ~~or~~ **January 1995*.**

(ii) Emission factors established in the Factor Information Retrieval System, (FIRE) version 6.23, October, 2000*.

~~(ii) in the alternative, the source may substitute site~~ **(iii)** Site-specific values ~~other than those listed under item (i)~~ if these site specific values are accepted by the department and the U.S. EPA.

(iv) Other documentable methodology approved by the department and U.S. EPA.

~~(F)~~ **(E)** Source classification code (SCC) number.

~~(5)~~ **(6)** Control equipment information, to include the following:

(A) ~~Current primary and secondary AIRS facility subsystem control equipment identification codes.~~ **Capture efficiency.**

(B) Current control equipment efficiency percentage **unless a controlled emission factor is applied.** The actual efficiency should reflect the total control efficiency from all control equipment **for each process pollutant.** If the actual control efficiency is unavailable, the efficiency designed by the manufacturer may be used or the control efficiency limit imposed by a permit should be used.

~~(6) Process rate data, to include the following:~~

~~(A)~~ **(7)** Annual process rate (annual throughput) ~~The AIRS facility subsystem source classification code table prescribes the units to be used with each source classification code~~ for ~~annual fuel~~ **each** process. ~~reporting.~~

~~(B) For sources falling under section 1(a) of this rule, the peak ozone season daily process rate. The AIRS facility subsystem source classification code table prescribes the units to be used with each source classification code for peak ozone season daily process rate reporting.~~

(f) Nothing in this rule requires stack testing.

(g) The department may request emissions and emissions related information from any source permitted by the department for emissions inventory purposes when needed for air quality planning, air quality modeling, and state implementation plan development. A source that receives an information request pursuant to this subsection shall provide the information in writing to the department within sixty (60) days of receipt of the department's request.

*These documents are incorporated by reference and are available for review **and copying** at the Office of Air ~~Management,~~ **Quality,** Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana or for purchase from U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711. *(Air Pollution Control Board; 326 IAC 2-6-4; filed Nov 12, 1993, 4:00 p.m.: 17 IR 734; errata, 17 IR 1009)*

SECTION 5. 326 IAC 2-6-5 IS ADDED TO READ AS FOLLOWS:

326 IAC 2-6-5 Violations

Authority: IC 13-14-8; IC 13-17-3
Affected: IC 13-15; IC 13-17

Sec. 5. (a) Failure to comply with any provision of this rule, including failure to submit an emission statement by the applicable date, constitutes a violation of this rule.

(b) The United States Postal Service postmark is recognized as the submittal date. *(Air Pollution Control Board; 326 IAC 2-6-5)*

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on October 3, 2001 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington

Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 2-6.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Jean Beauchamp, Rule Development section, (317) 232-8424 or (800) 451-6027, press 0, and ask for 2-8424 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-1785. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Quality

TITLE 327 WATER POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #00-266

DIGEST

Amends 327 IAC 8-2 and 327 IAC 8-2.1 concerning public notification requirements for public water supply systems. Repeals 327 IAC 8-2-15, 327 IAC 8-2-16, 327 IAC 8-2-17, and 327 IAC 8-2-18. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: #00-266 (WPCB) December 1, 2000, Indiana Register (24 IR 803).

Second Notice of Comment Period and Notice of First Hearing: #00-266 (WPCB) February 1, 2001, Indiana Register (24 IR 1478).

Continuation of Second Comment Period and Notice of Rescheduled First Hearing: #00-266 (WPCB) March 1, 2001, Indiana Register (24 IR 1977).

Change in Notice of Public Hearing: #00-266(WPCB) June 1, 2001, Indiana Register (24 IR 2723).

Date of First Hearing: June 13, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long. This proposed rule is not substantively different from the draft rule published on February 1, 2001, at 24 IR 1478; therefore, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from February 1, 2001, through March 31, 2001 on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On June 13, 2001, the water pollution control board (board) conducted the first public hearing/board meeting on the amendments to 327 IAC 8-2 and the amendments and additions to 327 IAC 8-2.1. No comments were made at the first hearing.

327 IAC 8-2-1	**327 IAC 8-2-18**
327 IAC 8-2-2	**327 IAC 8-2-20**
327 IAC 8-2-4	**327 IAC 8-2.1-3**
327 IAC 8-2-4.1	**327 IAC 8-2.1-6**
327 IAC 8-2-5.1	**327 IAC 8-2.1-7**
327 IAC 8-2-5.3	**327 IAC 8-2.1-8**
327 IAC 8-2-5.5	**327 IAC 8-2.1-9**
327 IAC 8-2-7	**327 IAC 8-2.1-10**
327 IAC 8-2-8.4	**327 IAC 8-2.1-11**
327 IAC 8-2-10.2	**327 IAC 8-2.1-12**
327 IAC 8-2-13	**327 IAC 8-2.1-13**
327 IAC 8-2-14	**327 IAC 8-2.1-14**
327 IAC 8-2-15	**327 IAC 8-2.1-15**
327 IAC 8-2-16	**327 IAC 8-2.1-16**
327 IAC 8-2-17	**327 IAC 8-2.1-17**

SECTION 1. 327 IAC 8-2-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-1 Definitions

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-18

Sec. 1. In addition to the definitions contained in IC 13-11-2 and 327 IAC 1, the following definitions apply throughout this rule:

(1) "Act" means the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(2) "Action level" means the concentration of lead or copper in water specified in section 36(c) of this rule which determines, in some cases, the treatment requirements contained in sections 36 through 47 of this rule, that a water system is required to complete.
(3) "Adjustment program" means the addition of fluoride to drinking water by a public water system for the prevention of dental cavities.
(4) "Administrator" means the administrator of the U.S. EPA.
(5) "Best available technology (BAT)" means best technology, treatment techniques, or other means which the commissioner finds are available, after examination for efficacy under field conditions, and not solely under laboratory conditions, and after taking cost into consideration. For the purpose of setting maximum contaminant levels for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.
(6) "Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.
(7) "Commissioner" means the commissioner of the Indiana department of environmental management or the designated agent of the commissioner.
(8) "Community water system" means a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents.
(9) "Compliance cycle" means the nine (9) year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three (3) three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.
(10) "Compliance period" means a three (3) year calendar year period within a compliance cycle. Each compliance cycle has three (3) three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001. **Within the second compliance cycle, the first compliance period runs from January 1, 2002, to December 31, 2004; the second from January 1, 2005, to December 31, 2007; and the third from January 1, 2008, to December 31, 2010. Within the third compliance cycle, the first compliance period runs from January 1, 2011, to December 31, 2013; the second from January 1, 2014, to December 31, 2016; and the third from January 1, 2017, to December 31, 2019.**
(11) "Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.
(12) "Contaminant" means any micro-organisms, chemicals, waste, physical substance, radiological substance, or any wastewater introduced or found in the drinking water.
(13) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.
(14) "Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.
(15) "CT" or "CTcalc" is the product of residual disinfectant concentration (C) in milligrams per liter determined before or at the first customer and the corresponding disinfectant contact time (T) in minutes, such as C × T. If a public water system applies disinfectants at more than one (1) point prior to the first customer, it must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or total inactivation ratio. In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point. $CT_{99.9}$ is the CT value required for ninety-nine and nine-tenths percent (99.9%) (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appears in Tables 1.1-1.6, 2.1, and 3.1 of paragraph 141.74(b)(3)[1].

$$\frac{CTcalc}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios or total inactivation ratio shown as:

$$\sum_{j} \frac{(CTcalc)}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than one (1.0) is assumed to provide a 3-log inactivation of Giardia lamblia cysts.
(16) "Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which:
(A) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum); and
(B) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.
(17) "Direct filtration" means a series of processes, including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.
(18) "Disinfectant" means any oxidant, including, but not limited to, chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process that is intended to kill or inactivate pathogenic micro-organisms.
(19) "Disinfectant contact time" (T in CT calculations) means the time in minutes that it takes for water to move from the

point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (C) is measured. Where only one (1) C is measured, T is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where C is measured. Where more than one (1) C is measured, T is:

(A) for the first measurement of C, the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first C is measured; and

(B) for subsequent measurements of C, the time in minutes that it takes for water to move from the previous C measurement point to the C measurement point for which the particular T is being calculated.

Disinfectant contact time in pipelines must be calculated based on plug flow by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

(20) "Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

(21) "Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a public water system with more than one (1) service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

(22) "Dose equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRUM).

(23) "Drinking water violation" means violations of the maximum contaminant level (MCL), treatment technique (TT), monitoring requirements, and testing procedures in this rule. 327 IAC 8-2.1-16 identifies the tier assignment for each specific violation or situation requiring a public notice.

~~(23)~~ **(24)** "Effective corrosion inhibitor residual" means a concentration sufficient to form a passivating film on the interior walls of a pipe for the purpose of sections 36 through 47 of this rule only.

~~(24)~~ **(25)** "Filtration" means a process for removing particulate matter from water by passage through porous media.

~~(25)~~ **(26)** "First draw sample" means a one (1) liter sample of tap water collected in accordance with section 37 of this rule, that has been standing in the plumbing pipes at least six (6) hours and is collected without flushing the tap.

~~(26)~~ **(27)** "Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

~~(27)~~ **(28)** "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

~~(28)~~ **(29)** "Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

~~(29)~~ **(30)** "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia lamblia; or

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

Direct influence must be determined for individual sources in accordance with criteria established by the commissioner. The commissioner's determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

~~(30)~~ **(31)** "Halogen" means one (1) of the chemical elements chlorine, bromine, or iodine.

~~(31)~~ **(32)** "Initial compliance period" means January 1993 to December 1995, for the contaminants listed in sections 4 (other than arsenic, barium, cadmium, fluoride, lead, mercury, selenium, and silver), 5, and 5.4(a) (other than benzene, vinyl chloride, carbon tetrachloride, 1,2-dichloroethane, trichloroethylene, 1,1-dichloroethylene, 1,1,1-trichloroethane, and para-dichlorobenzene) of this rule.

~~(32)~~ **(33)** "Large water system" means a water system that serves more than fifty thousand (50,000) people for the purpose of sections 36 through 47 of this rule only.

~~(33)~~ **(34)** "Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck, or other fitting which is connected to such lead line.

~~(34)~~ **(35)** "Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

~~(35)~~ **(36)** "Manmade beta particle and photon emitters" means all radionuclides emitting beta particle and/or photons listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure", NBS Handbook 69, as amended August 1973, U.S. Department of Commerce, except the daughter products of thorium-232, uranium-235, and uranium-238.

~~(36)~~ **(37)** "Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the

water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

~~(37)~~ **(38)** "Maximum contaminant level goal (MCLG)" means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur and which includes an adequate margin of safety. Maximum contaminant level goals are nonenforceable health goals.

~~(38)~~ **(39)** "Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven (7) days at a temperature of twenty-five (25) degrees Celsius or above.

~~(39)~~ **(40)** "Medium size water system" means a water system that serves greater than three thousand three hundred (3,300) and less than or equal to fifty thousand (50,000) persons for the purpose of sections 36 through 47 of this rule only.

~~(40)~~ **(41)** "Near the first service connection" means at one (1) of the twenty percent (20%) of all service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

~~(41)~~ **(42)** "Noncommunity water system" means a public water system which has at least fifteen (15) service connections used by nonresidents or which regularly serves twenty-five (25) or more nonresident individuals daily for at least sixty (60) days per year.

~~(42)~~ **(43)** "Nontransient noncommunity water system (NTNCWS)" means a public water system that is not a community water system which regularly serves the same twenty-five (25) or more persons at least six (6) months per year.

~~(43)~~ **(44)** "Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulations for the purpose of sections 36 through 47 of this rule only.

~~(44)~~ **(45)** "Performance evaluation sample" means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the administrator. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

~~(45)~~ **(46)** "Picocuri (pCi)" means the quantity of radioactive material producing two and twenty-two hundredths (2.22) nuclear transformations per minute.

~~(46)~~ **(47)** "Point of disinfectant application" is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water run-off.

~~(47)~~ **(48)** "Point-of-entry treatment device (POE)" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in drinking water distributed throughout the house or building.

~~(48)~~ **(49)** "Point-of-use treatment device (POU)" is a treatment device to a single tap used for the purpose of reducing contaminants in drinking water at that one (1) tap.

(50) "Primacy agency" is the department of environmental management where the department exercise primary enforcement responsibility as granted by EPA.

~~(49)~~ **(51)** "Public water system" means a public water supply for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals daily at least sixty (60) days out of the year. "Public water system" includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. A public water system is either a community water system or a noncommunity water system, as defined in subdivisions (8) and ~~(41).~~ **(42).**

~~(50)~~ **(52)** "Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A millirem (mrem) is one-thousandth (1/1,000) of a rem.

~~(51)~~ **(53)** "Repeat compliance period" means any subsequent compliance period after the initial compliance period.

~~(52)~~ **(54)** "Residual disinfectant concentration"(C in CT calculations) means the concentration of disinfectant measured in milligrams per liter in a representative sample of water.

~~(53)~~ **(55)** "Sanitary survey" means an on-site inspection of the water source, facilities, equipment, construction, and operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, construction, and operation and maintenance for producing and distributing safe drinking water.

~~(54)~~ **(56)** "Sedimentation" means a process for removal of solids before filtration by gravity or separation.

~~(55)~~ **(57)** "Service line sample" means a one (1) liter sample of water collected in accordance with section 37(b)(3) of this rule that has been standing at least six (6) hours in a service line.

~~(56)~~ **(58)** "Single family structure" means a building constructed as a single family residence that is currently being used as either a residence or a place of business for the purpose of sections 36 through 47 of this rule only.

~~(57)~~ **(59)** "Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than four-tenths (0.4) meter per hour or forty-five (45) to one hundred fifty (150) gallons per day per square foot) resulting in substantial particulate removal by physical and biological mechanisms.

~~(58)~~ **(60)** "Small water system" means a water system that serves three thousand three hundred (3,300) persons or fewer for the purpose of sections 36 through 47 of this rule only.

~~(59)~~ **(61)** "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

~~(60)~~ **(62)** "Supplier of water" means any person who owns and/or operates a public water system.

~~(61)~~ **(63)** "Surface water" means all water occurring on the surface of the ground, including water in a stream, natural and artificial lakes, ponds, swales, marshes, and diffused surface water.

~~(62)~~ **(64)** "System with a single service connection" means a public water system which supplies drinking water to consumers via a single service line.

~~(63)~~ **(65)** "Too numerous to count" means that the total number of bacterial colonies exceeds two hundred (200) on a forty-seven (47) millimeter diameter membrane filter used for coliform detection.

~~(64)~~ **(66)** "Total trihalomethanes (TTHM)" means the sum of the concentration in milligrams per liter of the trihalomethane compounds:

(A) trichloromethane (chloroform);

(B) dibromochloromethane;

(C) bromodichloromethane; and

(D) tribromomethane (bromoform);

rounded to two (2) significant figures.

~~(65)~~ **(67)** "Transient noncommunity water system (TWS)" means a noncommunity water system that does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year.

~~(66)~~ **(68)** "Trihalomethane (THM)" means one (1) of the family of organic compounds, named as derivatives of methane, wherein three (3) of the four (4) hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

~~(67)~~ **(69)** "U.S. EPA" or "EPA" means the United States Environmental Protection Agency.

~~(68)~~ **(70)** "Virus" means a virus of fecal origin which is infectious to humans by waterborne transmission.

~~(69)~~ **(71)** "Waterborne disease outbreak" means the significant occurrence of acute infectious illness epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment as determined by the commissioner.

[1]Federal Register, Part II, 40 CFR 141, June 29, 1989, Volume 54, Number 124, pages 27532 through 27534.

(Water Pollution Control Board; 327 IAC 8-2-1; filed Sep 24, 1987, 3:00 p.m.: 11 IR 705; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1003; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2151; filed Aug 24, 1994, 8:15 a.m.: 18 IR 19; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Oct 24, 1997, 4:30 p.m.: 21 IR 932; filed Mar 6, 2000, 7:56 a.m.: 23 IR 1623)

SECTION 2. 327 IAC 8-2-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-2 Applicability of rule; modification of monitoring requirements

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 2. (a) Each public water system shall comply with all of the provisions of this rule **and 327 IAC 8-2.1** unless the public water system meets all of the following conditions:

(1) Consists only of distribution and storage facilities and does not have collection and treatment facilities.

(2) Obtains all of its water from, but is not owned or operated by, a public water system to which this article applies.

(3) Does not sell water to any person.

(4) Is not a carrier which conveys passengers in interstate commerce.

(b) When a public water system supplies water to one (1) or more public water systems, the commissioner may modify the monitoring requirements imposed by this rule to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the commissioner and concurred in by the administrator. The commissioner shall provide a copy of the determination to the administrator. *(Water Pollution Control Board; 327 IAC 8-2-2; filed Sep 24, 1987, 3:00 p.m.: 11 IR 706; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1006; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258)*

SECTION 3. 327 IAC 8-2-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-4 Inorganic chemicals; maximum contaminant levels

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 4. (a) The following MCLs for inorganic chemicals apply to all community water systems, nontransient noncommunity water systems, and transient noncommunity systems except as provided in subsection (b):

Contaminant	Level in Milligrams Per Liter
Nitrate	10 (as nitrogen)
Nitrite	1 (as nitrogen)
Nitrate and nitrite	10 (as nitrogen)

(b) The commissioner may allow nitrate levels up to, but not to exceed, twenty (20) milligrams per liter in a noncommunity water system if the supplier of water meets all of the following conditions:

(1) Such water will not be available to children under six (6) months of age.

(2) There will be continuous posting of the fact that nitrate levels exceed ten (10) milligrams per liter and the potential health effects of exposure.
(3) Local and state public health authorities shall be notified annually of nitrate levels that exceed ten (10) milligrams per liter.
(4) No adverse health effects shall result.
(5) The commissioner may require additional notice to the public as provided by ~~section 15 of this rule.~~ **327 IAC 8-2.1-14.**

(c) The following MCL for fluoride applies to all community water systems:

Contaminant	Level in Milligrams Per Liter
Fluoride	4.0

(d) The following MCLs for inorganic chemicals apply to all community water systems and nontransient noncommunity water systems:

Contaminant	Level in Milligrams Per Liter Except Asbestos
Antimony	0.006
Arsenic	0.05
Asbestos	7 (MFL)[1]
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Cyanide (free)	0.2
Mercury	0.002
Selenium	0.05
Thallium	0.002

[1]MFL = million fibers per liter greater than ten (10) micrometers.

(e) For the inorganic chemicals listed in this section and nickel, the monitoring frequency is specified in section 4.1 of this rule and analytical methods are specified in section 4.2 of this rule.

(f) The commissioner hereby identifies the following as the best available technology, treatment technique, or other means available for achieving compliance with the MCLs for inorganic contaminants identified in subsections (a), (c), and (d), except fluoride:

BAT for Inorganic Chemicals Listed in This Section

Chemical Name	BATs
Antimony	2,7
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6[2],7
Cyanide	5,7,10
Mercury	2[1],4,6[1],7[1]
Nitrate	5,7,9
Nitrite	5,7
Selenium	1,2[3],6,7,9
Thallium	1,5

[1]BAT only if influent mercury concentrations less than ten (10) micrograms per liter.
[2]BAT for Chromium III only.
[3]BAT for Selenium IV only.
Key to BATs in Table
1 = Activated alumina
2 = Coagulation/filtration
3 = Direct and diatomite filtration
4 = Granular activated carbon
5 = Ion exchange
6 = Lime softening
7 = Reverse osmosis
8 = Corrosion control
9 = Electrodialysis
10 = Chlorine
11 = Ultraviolet
(Water Pollution Control Board; 327 IAC 8-2-4; filed Sep 24, 1987, 3:00 p.m.: 11 IR 706; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1006; filed Aug 24, 1994, 8:15 a.m.: 18 IR 22; filed Aug 25, 1997, 8:00 a.m.: 21 IR 34)

SECTION 4. 327 IAC 8-2-4.1, PROPOSED TO BE AMENDED AT 23 IR 2550, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-4.1 Collection of samples for inorganic chemical testing

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 4.1. (a) Community water systems shall conduct monitoring to determine compliance with the MCLs specified in section 4(a), 4(c), and 4(d) of this rule in accordance with this section. Nontransient noncommunity water systems shall conduct monitoring to determine compliance with the MCLs specified in section 4(a) and 4(d) of this rule in accordance with this section. Transient noncommunity water systems shall conduct monitoring to determine compliance with the MCLs specified in section 4(a) of this rule in accordance with this section.

(b) When a contaminant listed in section 4 of this rule exceeds the MCL, the supplier of water shall report to the commissioner under section 13 of this rule and shall give notice to the public under ~~section 15 of this rule.~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.** Monitoring after public notification shall be at a frequency designated by the commissioner and shall continue until the MCL has not been exceeded in two (2) successive samples or until a monitoring schedule as a condition

to ~~a variance, exemption, or~~ **an** enforcement action shall become effective.

(c) Monitoring shall be conducted as follows:

(1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point) beginning in the compliance period starting January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems, including systems with a combination of surface and ground sources, shall take a minimum of one (1) sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point) beginning in the compliance period beginning January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(3) If a system draws water from more than one (1) source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions, for example, when water is representative of all sources being used.

(4) The commissioner may reduce the total number of samples which must be analyzed by allowing the use of compositing. Composite samples from a maximum of five (5) samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($^1/_5$) of the MCL. Compositing of samples must be completed in the laboratory as follows:

(A) When a composite sample is analyzed, if the concentration in the composite sample is greater than or equal to one-fifth ($^1/_5$) of the MCL of any inorganic chemical, then a follow-up sample must be analyzed within fourteen (14) days at each sampling point included in the composite. These samples must be analyzed for the contaminants which exceeded one-fifth ($^1/_5$) of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are the following:

Contaminant	MCL (mg/l)	Methodology	Detection Limit (mg/l)
Antimony	0.006	Atomic absorption; furnace	0.003
		Atomic absorption; platform	0.0008[5]
		ICP-mass spectrometry	0.0004
		Hydride-atomic absorption	0.001
Asbestos	7 MFL[1]	Transmission electron microscopy	0.01 MFL
Barium	2	Atomic absorption; furnace	0.002
		Atomic absorption; direct aspiration	0.1
		Inductively coupled plasma	0.002 (0.001)
Beryllium	0.004	Atomic absorption; furnace	0.0002
		Atomic absorption; platform	0.00002[5]
		Inductively coupled plasma[2]	0.0003
		ICP-mass spectrometry	0.0003
Cadmium	0.005	Atomic absorption; furnace	0.0001
		Inductively coupled plasma	0.001
Chromium	0.1	Atomic absorption; furnace	0.001
		Inductively coupled plasma	0.007 (0.001)
Cyanide	0.2	Distillation, spectrophotometric[3]	0.02
		Distillation, automated spectrophotometric[3]	0.005
		Distillation, selective electrode[3]	0.05
		Distillation, amenable, spectrophotometric[4]	0.02
Fluoride	4.0	Colorimetric SPADNS; with distillation	0.1
		Potentiometric ion selective electrode	0.1
		Automated alizarin fluoride blue; with distillation (complexone)	0.05
		Automated ion selective electrode	0.1
Mercury	0.002	Manual cold vapor technique	0.0002
		Automated cold vapor technique	0.0002
Nitrate	10 (as N)	Manual cadmium reduction	0.01
		Automated hydrazine reduction	0.01
		Automated cadmium reduction	0.05
		Ion selective electrode	1
		Ion chromatography	0.01
Nitrite	1 (as N)	Spectrophotometric	0.01
		Automated cadmium reduction	0.05
		Manual cadmium reduction	0.01
		Ion chromatography	0.004
Selenium	0.05	Atomic absorption; furnace	0.002
		Atomic absorption; gaseous hydride	0.002
Thallium	0.002	Atomic absorption; furnace	0.001
		Atomic absorption; platform	0.0007[5]
		ICP-mass spectrometry	0.0003

[1]MFL = million fibers per liter greater than ten (10) micrometers.

[2]Using a 2x preconcentration step as noted in Method 200.7. Lower method detection limits may be achieved when using a 4x preconcentration.

[3]Screening method for total cyanides.

[4]Measures "free" cyanides.

[5]Lower method detection limits are reported using stabilized temperature graphite furnace atomic absorption.

(B) If the population served by the system is greater than three thousand three hundred (3,300) persons, then compositing may only be permitted by the commissioner at sampling points within a single system. In systems serving less than or equal to three thousand three hundred (3,300) persons, the commissioner may permit compositing among different systems provided the five (5) sample limit is maintained.

(C) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use these instead of resampling. The duplicate must be analyzed and the results reported to the commissioner within fourteen (14) days after completing analysis of the composite sample, provided the holding time of the sample is not exceeded.

(5) The frequency of monitoring for:

(A) asbestos shall be in accordance with subsection (d);

(B) antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, nickel, mercury, selenium, and thallium shall be in accordance with subsection (e);

(C) nitrate shall be in accordance with subsection (f);

(D) nitrite shall be in accordance with subsection (g); and

(E) arsenic shall be in accordance with subsection (l).

(d) The frequency of monitoring conducted to determine compliance with the MCL for asbestos specified in section 4(d) of this rule shall be conducted as follows:

(1) Each community and nontransient noncommunity water system is required to monitor for asbestos during the first three (3) year compliance period of each nine (9) year compliance cycle beginning in the compliance period starting January 1, 1993.

(2) If the system believes it is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, it may apply to the commissioner for a waiver of the monitoring requirement in subdivision (1). If the commissioner grants the waiver, the system is not required to monitor.

(3) The commissioner may grant a waiver based upon a consideration of the following factors:

(A) Potential asbestos contamination of the water source.

(B) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(4) A waiver remains in effect for the initial monitoring of the first three (3) year compliance period. Systems not receiving a waiver must monitor in accordance with the provisions of subdivision (1).

(5) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(6) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provision of subsection (c).

(7) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one (1) sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(8) A system which exceeds the MCLs as determined in section 4 of this rule shall monitor quarterly beginning in the next quarter after the violation occurred.

(9) The commissioner may decrease the quarterly monitoring requirement to the frequency specified in subdivision (1) provided the commissioner has determined that the system is reliably and consistently below the MCL. In no case can the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four (4) quarterly samples.

(10) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of this subsection, then the commissioner may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(e) The frequency of monitoring conducted for nickel and to determine compliance with the MCLs in section 4 of this rule for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, and thallium shall be as follows:

(1) Ground water systems shall take one (1) sample at each sampling point during each compliance period. Surface water systems (or combined surface/ground) shall take one (1) sample annually at each sampling point.

(2) The system may apply to the commissioner for a waiver from the monitoring frequencies specified in subdivision (1).

(3) A condition of the waiver shall require that a system take a minimum of one (1) sample while the waiver is effective. The term during which the waiver is effective shall not exceed one (1) compliance cycle which is nine (9) years.

(4) The commissioner may grant a waiver provided surface water systems have monitored annually for at least three (3) years and ground water systems have conducted a minimum of three (3) rounds of monitoring. (At least one (1) sample shall have been taken since January 1, 1990.) Both surface and ground water systems shall demonstrate that all previous analytical results were less than the maximum contaminant level. Systems that use a new water source are not eligible for a waiver until three (3) rounds of monitoring from the new source have been completed. The commissioner may grant a public water system a waiver for monitoring of cyanide, provided that the commissioner determines that the system is not vulnerable due to lack of any industrial source of cyanide.

(5) In determining the appropriate reduced monitoring frequency, the commissioner shall consider the following:

(A) Reported concentrations from all previous monitoring.

(B) The degree of variation in reported concentrations.

(C) Other factors which may affect contaminant concentrations such as:

(i) changes in ground water pumping rates;
(ii) changes in the system's configuration;
(iii) changes in the system's operating procedures; or
(iv) changes in stream flows or characteristics.

(6) A decision by the commissioner to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the commissioner or upon an application by the public water system. The public water system shall specify the basis for its request. The commissioner shall review and, where appropriate, revise the determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency becomes available.

(7) Systems which exceed the MCLs as calculated in subsection (k) shall monitor quarterly beginning in the next quarter after the violation occurred.

(8) The commissioner may decrease the quarterly monitoring requirement to the frequencies specified in subdivisions (1) and (2) provided it has determined that the system is reliably and consistently below the MCL. In no case can the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(f) All public water systems (community, nontransient noncommunity, and transient noncommunity systems) shall monitor to determine compliance with the MCL for nitrate in section 4(a) of this rule under the following monitoring schedules:

(1) Community and nontransient noncommunity water systems served by ground water systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993.

(2) For community and nontransient noncommunity water systems, the repeat monitoring frequency for ground water systems shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty percent (50%) of the MCL. The commissioner may allow a ground water system to reduce the sampling frequency to annually after four (4) consecutive quarterly samples are reliably and consistently less than the MCL.

(3) For community and nontransient noncommunity water systems, the commissioner may allow a surface water system to reduce the sampling frequency to annually if all analytical results from four (4) consecutive quarters are less than fifty percent (50%) of the MCL. A surface water system shall return to quarterly monitoring if any one (1) sample is greater than or equal to fifty percent (50%) of the MCL.

(4) Each transient noncommunity water system shall monitor annually beginning January 1, 1993.

(5) After the initial round of quarterly sampling is completed, each community and nontransient noncommunity system which is monitoring annually shall take subsequent samples during the quarter which previously resulted in the highest analytical result.

(g) All public water systems (community, nontransient noncommunity, and transient noncommunity systems) shall monitor to determine compliance with the MCL for nitrite in section 4(a) of this rule under the following monitoring schedules:

(1) All public water systems shall take one (1) sample at each sampling point in the compliance period beginning January 1, 1993, and ending December 31, 1995.

(2) After the initial sample, systems where an analytical result for nitrite is less than fifty percent (50%) of the MCL shall monitor at the frequency specified by the commissioner.

(3) For community, nontransient noncommunity, and transient noncommunity water systems, the repeat monitoring frequency for any water system shall be quarterly for at least one (1) year following any one (1) sample in which the concentration is greater than or equal to fifty percent (50%) of the MCL. The commissioner may allow a system to reduce the sampling frequency from quarterly to annually after determining the system is reliably and consistently less than the MCL.

(4) Systems which are monitoring annually shall take each subsequent sample during the quarter which previously resulted in the highest analytical result.

(h) Confirmation sampling shall be as follows:

(1) Where the results of sampling for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, or thallium indicate the MCL has been exceeded, the commissioner may require that one (1) additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two (2) weeks) at the same sampling point.

(2) Where nitrate or nitrite sampling results indicate the MCL has been exceeded, the system shall take a confirmation sample within twenty-four (24) hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the twenty-four (24) hour sampling requirement must immediately notify the consumers served by the public water system in accordance with ~~section 15 of this rule.~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.** Systems exercising this option must take and analyze a confirmation sample within two (2) weeks of notification of the analytical results of the first sample.

(3) If a commissioner-required confirmation sample is taken for any contaminant, the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with subsection (k). The commissioner has the discretion to delete results of obvious sampling errors.

(i) The commissioner may require more frequent monitoring than specified in subsections (d) through (g) or may require confirmation samples for positive and negative results.

(j) Systems may apply to the commissioner to conduct more frequent monitoring than the minimum monitoring frequencies specified in this section.

(k) Compliance with section 4 of this rule shall be determined based on the analytical results obtained at each sampling point in the following manner:

(1) For systems which are conducting monitoring at a frequency greater than annual, compliance with the MCLs for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, or thallium is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one (1) sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero (0) for the purpose of determining the annual average.

(2) For systems which are monitoring annually, or less frequently, the system is out of compliance with the MCLs for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, or thallium if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the commissioner, the determination of compliance will be based on the average of the two (2) samples.

(3) Compliance with the MCLs for nitrate and nitrite is determined based on one (1) sample if the levels of these contaminants are below the MCLs. If the levels of nitrate and/or nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with subsection (h)(2), and compliance shall be determined based upon the average of the initial and confirmation samples.

(4) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commissioner may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

(l) The frequency of monitoring conducted to determine compliance with the MCL for arsenic shall be as follows:

(1) Analyses for all community water systems utilizing surface water sources shall be sampled annually.

(2) Analyses for all community water systems utilizing only ground water sources shall be repeated at three (3) year intervals.

(3) The commissioner has the authority to determine compliance or initiate enforcement action based on analytical results.

(4) If the result of an analysis conducted as required in this section indicates that the results exceed the MCL as determined in section 4 of this rule, the supplier of water shall report to the state within seven (7) days and initiate three (3) additional analyses at the same sampling point within one (1) month.

(5) When the average of four (4) analyses made pursuant to this section, rounded to the same number of significant figures as the MCL for the arsenic, exceeds the MCL, the supplier of water shall notify the commissioner and give notice to the public under section 16 of this rule. Monitoring after public notification shall be at a frequency set by the commissioner and shall continue until the MCL has not been exceeded in two (2) consecutive samples or until a monitoring schedule as a condition to ~~a variance, exemption, or~~ **an** enforcement action shall become effective.

(m) Each public water system shall monitor at the time designated by the commissioner during each compliance period.

(n) Sample collection for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the following table:

Contaminant	Preservative[3]	Container[1]	Time[2]
Antimony	HNO_3	P or G	6 months
Asbestos	4EC	P or G	48 hours[4]
Barium	HNO_3	P or G	6 months
Beryllium	HNO_3	P or G	6 months
Cadmium	HNO_3	P or G	6 months
Chromium	HNO_3	P or G	6 months
Cyanide	4EC, NaOH	P or G	14 days
Fluoride	none	P or G	1 month
Mercury	HNO_3	P or G	28 days
Nickel	HNO_3	P or G	6 months
Nitrate	4EC	P or G	48 hours[5]
Nitrate-Nitrite[6]	H_2SO_4	P or G	28 days
Nitrite	4EC	P or G	48 hours
Selenium	HNO_3	P or G	6 months
Thallium	HNO_3	P or G	6 months

[1]P = Plastic, hard or soft; G = glass.

[2]In all cases, samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers, or holding times that is specified in method.

[3]When indicated, samples must be acidified at the time of collection to pH < 2 with concentrated acid or adjusted with sodium hydroxide to pH > 12. When chilling is indicated the sample must be shipped and stored at four (4) degrees Celsius or less.

[4]Instructions for containers, preservation procedures, and holding times as specified in Method 100.2 must be adhered to for all compliance analyses including those conducted with Method 100.1.

[5]If the sample is chlorinated, the holding time for an unacidified sample kept at four (4) degrees Celsius is extended to fourteen (14) days.

[6]Nitrate-Nitrite refers to a measurement of total nitrate.

(Water Pollution Control Board; 327 IAC 8-2-4.1; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1007; filed Aug 24, 1994, 8:15 a.m.: 18 IR 23; filed Aug 25, 1997, 8:00 a.m.: 21 IR 34; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1347)

SECTION 5. 327 IAC 8-2-5.1, PROPOSED TO BE AMENDED AT 23 IR 2557, SECTION 3, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.1 Collection of samples for organic chemical testing other than volatile organic compounds and total trihalomethanes

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5.1. To determine compliance with section 5(a) of this rule, collection of samples for organic chemical testing, other than volatile organic compounds and total trihalomethanes, shall be made as follows:

(1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems, including those systems with a combination of surface and ground sources, shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(3) If the system draws water from more than one (1) source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions such as when water representative of all sources is being used.

(4) The monitoring frequency is as follows:

(A) Each community and nontransient noncommunity water system shall take four (4) consecutive quarterly samples for each contaminant listed in section 5(a) of this rule during each compliance period beginning with the initial compliance period.

(B) Systems serving more than three thousand three hundred (3,300) persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of two (2) quarterly samples in one (1) year during each repeat compliance period.

(C) Systems serving less than or equal to three thousand three hundred (3,300) persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one (1) sample during each repeat compliance period.

(5) Each community and nontransient noncommunity water system may apply to the commissioner for a waiver from the requirement of subdivision (4). A system must reapply for a waiver for each compliance period.

(6) The commissioner may grant a waiver after evaluating the knowledge of previous use, including transport, storage, or disposal of the contaminant within the watershed or zone of influence of the system. If a determination by the commissioner reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(A) Previous analytical results.

(B) The proximity of the system to a potential point or nonpoint source of contamination. (Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Nonpoint sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses).

(C) The environmental persistence and transport of the pesticide or polychlorinated biphenyls (PCBs).

(D) How well the water source is protected against contamination due to such factors as:

(i) depth of the well;

(ii) the type of soil; and

(iii) the integrity of the well casing.

(E) Elevated nitrate levels at the water supply source.

(F) Use of PCBs in equipment used in the production, storage, or distribution of water, including, but not limited to, PCBs used in pumps or transformers.

(7) If an organic contaminant listed in section 5(a) of this rule is detected as defined by subdivision (16), in any sample, then the monitoring requirements are as follows:

(A) Each system must monitor quarterly at each sampling point which resulted in a detection.

(B) The commissioner may decrease the quarterly monitoring requirement specified in clause (A) provided it has determined that the system is reliably and consistently below the MCL. In no case shall the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(C) After the commissioner determines the system is reliably and consistently below the MCL, the commissioner may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(D) Systems which have three (3) consecutive annual samples with no detection of contaminant may apply to the commissioner for a waiver as specified in subdivision (6).

(E) If monitoring results in detection of one (1) or more of

certain related contaminants (aldicarb, aldicarb sulfoxide, aldicarb sulfone, heptachlor, and heptachlor epoxide), then subsequent monitoring shall include analyses for all related contaminants.

(8) Systems which violate the requirements of section 5(a) of this rule as determined by subdivision (11) must monitor quarterly. After a minimum of four (4) quarterly samples shows the system is in compliance and the commissioner determines the system is reliably and consistently below the MCL, as specified in subdivision (11), the system shall monitor at the frequency specified in subdivision (7)(C).

(9) The commissioner may require a confirmation sample for positive or negative results. If a confirmation sample is required by the commissioner, the result must be averaged with the first sampling result and the average used for the compliance determination as specified in subdivision (11). The commissioner has the discretion to delete results of obvious sampling errors from this calculation.

(10) The commissioner may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($^1/_5$) of the MCL. Compositing of samples must be done in the laboratory and analyzed within fourteen (14) days of sample collection.

(A) When a composite sample is analyzed, if the concentration in the composite sample detects one (1) or more contaminants listed in section 5(a) of this rule, then a follow-up sample must be analyzed within fourteen (14) days from each sampling point included in the composite and analyzed for that contaminant.

(B) If duplicates of the original sample taken from each sampling point used in the composite samples are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the commissioner within fourteen (14) days after completion of the composite analysis or before the holding time for the initial sample is exceeded, whichever is sooner.

(C) If the population served by the system is greater than three thousand three hundred (3,300) persons, then compositing may only be permitted by the commissioner at sampling points within a single system. In systems serving less than or equal to three thousand three hundred (3,300) persons, the commissioner may permit compositing among different systems provided the five (5) sample limit is maintained.

(11) Compliance with section 5(a) of this rule shall be determined based on the analytical results obtained at each sampling point in the following manner:

(A) For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero (0) for purposes of determining the annual average.

(B) If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the commissioner, the determination of compliance will be based on the average of two (2) samples.

~~(C) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commissioner may allow the system to give public notice to only that portion of the system which is out of compliance.~~

(12) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of this section and section 5.2 of this rule, then the commissioner may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period.

(13) The commissioner may increase the required monitoring frequency, where necessary, to detect variations within the system such as fluctuations in concentration due to seasonal use and changes in water source.

(14) The commissioner has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by the commissioner's sanctioned representatives or agencies, or both.

(15) Each public water system shall monitor at the time designated by the commissioner within each compliance period.

(16) Method detection levels for contaminants listed in section 5(a) of this rule are as follows:

Contaminant	Detection Limit (mg/l)
Alachlor	0.0002
Atrazine	0.0001
Benzo[a]pyrene	0.00002
Carbofuran	0.0009
Chlordane	0.0002
Dalapon	0.001
1,2-dibromo-3-chloropropane (DBCP)	0.00002
Di(2-ethylhexyl)adipate	0.0006
Di(2-ethylhexyl)phthalate	0.0006
Dinoseb	0.0002
Diquat	0.0004
2,4-D	0.0001
Endothall	0.009
Endrin	0.00001

Ethylene dibromide (EDB)	0.00001
Glyphosate	0.006
Heptachlor	0.00004
Heptachlor epoxide	0.00002
Hexachlorobenzene	0.0001
Hexachlorocyclopentadiene	0.0001
Lindane	0.00002
Methoxychlor	0.0001
Oxamyl	0.002
Picloram	0.0001
Polychlorinated biphenyls (PCBs) (as decachlorobiphenyl)	0.0001
Pentachlorophenol	0.00004
Simazine	0.00007
Toxaphene	0.001
2,3,7,8-TCDD (dioxin)	0.000000005
2,4,5-TP (silvex)	0.0002

(Water Pollution Control Board; 327 IAC 8-2-5.1; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1010; filed Aug 24, 1994, 8:15 a.m.: 18 IR 33; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 44; filed Apr 21, 1999, 3:22 p.m.: 22 IR 2862; errata filed Apr 28, 1999, 6:36 p.m.: 22 IR 2883)

SECTION 6. 327 IAC 8-2-5.3, PROPOSED TO BE AMENDED AT 23 IR 2562, SECTION 5, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.3 Collection of samples for total trihalomethanes testing; community water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 5.3. (a) To determine compliance with section 5 of this rule, each community water system which serves ten thousand (10,000) or more individuals and which adds a disinfectant (oxidant) to the water in any part of the drinking water treatment process shall collect and analyze samples for total trihalomethanes (TTHM) in accordance with this section. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with the commissioner's approval, be considered one (1) treatment plant for determining the minimum number of samples. All samples taken within an established frequency shall be collected within a twenty-four (24) hour period.

(b) The requirements of subsection (a) apply as follows:

(1) Community water systems which utilize surface water sources in whole or in part, and community water systems which utilize only ground water sources and which have not been determined by the commissioner to qualify for the monitoring requirements of subsection (c) shall analyze for TTHM at quarterly intervals on at least four (4) water samples for each treatment plant used by the system. At least twenty-five percent (25%) of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining seventy-five percent (75%) shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water, and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the commissioner within thirty (30) days of the system's receipt of such results. All samples collected shall be used in the computation of the average, unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in subsection (e).

(2) Upon the written request of a community water system, the monitoring frequency required by subdivision (1) may be reduced by the commissioner to a minimum of one (1) sample analyzed for TTHM per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system. Upon a written determination by the commissioner that the data from at least one (1) year of monitoring in accordance with subdivision (1) and local conditions demonstrate that TTHM concentrations will be consistently below the MCL.

(3) If, at any time during which the reduced monitoring frequency prescribed under this section applies, the results from any analysis exceed ten-hundredths (0.10) milligram per liter of TTHM and such results are confirmed by at least one (1) check sample taken promptly after such results are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of subdivision (1) which monitoring shall continue for at least one (1) year before the frequency may be reduced again. At the discretion of the commissioner, a system's monitoring frequency shall be increased above the minimum in those cases where it is necessary to detect variations of TTHM levels within the distribution system.

(c) Monitoring frequency required by this section may only be reduced as follows:

(1) Upon written request to the commissioner, a community water system utilizing only ground water sources may seek to have the monitoring frequency required by subsection (a) reduced to a minimum of one (1) sample for maximum TTHM potential per year for each treatment plant used by the system taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit, to the commissioner, the results of at least one (1) sample analyzed for maximum TTHM potential using the procedure specified in subsection (g). A sample

must be analyzed from each treatment plant used by the system and be taken at a point in the distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the commissioner that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than ten-hundredths (0.10) milligram per liter and that, based upon an assessment of the local condition of the system, the system is not likely to approach or exceed the MCL for total TTHMs. The results of all analyses shall be reported to the commissioner within thirty (30) days of the system's receipt of such results. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of subsection (a) unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in subsection (e).

(2) If, at any time during which the reduced monitoring frequency prescribed under subdivision (1) applies, the results from any analysis taken by the system for maximum TTHM potential are equal to or greater than ten-hundredths (0.10) milligram per liter, and such results are confirmed by at least one (1) check sample taken promptly after such results are received, the system shall immediately begin monitoring in accordance with the requirements of subsection (b) and such monitoring shall continue for at least one (1) year before the frequency may be reduced again. In the event of any significant change to the system's source of water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting maximum residence time of the water in the system for the purpose of determining whether the system must comply with monitoring requirements of subsection (b). At the discretion of the commissioner, monitoring frequencies may and should be increased above the minimum in those cases where this is necessary to detect variation of TTHM levels within the distribution system.

(d) Compliance with section 5 of this rule for TTHM shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in subsection (b)(1) or (b)(2). If the average of samples covering any four (4) consecutive quarterly periods exceeds the MCL, the supplier of water shall report to the commissioner under section 13 of this rule and notify the public under ~~section 15 of this rule.~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.** Monitoring after public notification shall be at a frequency designated by the commissioner and shall continue until a monitoring schedule as a condition to ~~a variance, exemption, or~~ **an** enforcement action shall become effective.

(e) Samples for TTHM shall be dechlorinated upon collection to prevent further production of trihalomethanes according to the procedures described in the methods, except acidification is not required if only TTHMs or THMs are to be determined. Samples for maximum TTHM potential should not be dechlorinated and should be held for seven (7) days at twenty-five (25) degrees Celsius or above prior to analysis. Analyses made under this section shall be conducted by one (1) of the following U.S. EPA approved methods:

(1) Method 502.2, **Rev 2.1*.**

(2) Method 524.2*.

(3) Method 551.1*.

~~(4) Method 551*. This method is available for compliance monitoring only until June 1, 2001.~~

~~(5) Method 502.2, Rev 2.0. This method is available for compliance monitoring only until June 1, 2001.~~

(f) Before a community water system makes any significant modifications to its existing treatment process for the purpose of achieving compliance with the MCL established in section 5(a) of this rule, such system must submit and obtain the commissioner's approval of a detailed plan setting forth its proposed modification and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modification. Each system shall comply with the provisions set forth in the approved plan. At a minimum, a plan approved by the commissioner shall require the system modifying its disinfection practice to do the following:

(1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality.

(2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished water quality throughout the distribution system.

(3) Provide baseline water quality survey data of the distribution system. Such data should include the results from monitoring for coliform and fecal coliform bacterial, fecal streptococci, standard plate counts at thirty-five **(35)** degrees ~~(35)~~ Celsius and twenty (20) degrees Celsius, phosphate, ammonia nitrogen, and total organic carbon. Virus studies should be required where source waters are heavily contaminated with sewage effluent.

(4) Conduct additional monitoring to assure continued maintenance of optimal biological quality in finished water, for example, when chloramines are introduced as disinfectants or when prechlorination is being discontinued. Additional monitoring may also be required by the commissioner for chlorate, chlorite, and chlorine dioxide when chlorine dioxide is used. Standard plate count analysis may also be required by the commissioner as appropriate before and after any modifications.

(5) Consider inclusion in the plan provisions to maintain an active disinfectant residual throughout the distribution system at all times during and after modification.

(g) The water sample for determination of maximum trihalomethane potential is taken from a point in the distribution

system that reflects maximum residence time. Procedures for sample collection and handling are given in the methods. No reducing agent is added to quench the chemical reaction producing THMs at the time of sample collection. The intent is to permit the levels of THM precursors to be depleted and the concentration of THMs to be maximized for the supply to be tested. Four (4) experimental parameters affecting maximum THM production are pH, temperature, reaction time, and the presence of a disinfectant residual. These parameters are dealt with as follows:

(1) Measure the disinfectant residual at the selected sampling point. Proceed only if a measurable disinfectant residual is present.

(2) Collect triplicate forty (40) milliliter water samples at the pH prevailing at the time of sampling and prepare a method blank according to the methods.

(3) Seal and store these samples together for seven (7) days at twenty-five (25) degrees Celsius or above.

(4) After this time period, open one (1) of the sample containers and check for disinfectant residual. Absence of a disinfectant residual invalidates the sample for further analysis. Once a disinfectant residual has been demonstrated, open another of the sealed samples and determine total THM concentration using a method specified in subsection (e).

*The methods referenced in this section may be obtained as follows:

(1) Method 502.2, Rev 2.1 may be found in "Methods for the Determination of Organic Compounds in Drinking Water–Supplement III", EPA/600/R-95-131, August 1995, available from NTIS, PB95-261616, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(2) Method 551.1 may be found in "Methods for the Determination of Organic Compounds in Drinking Water)Supplement–III", EPA/600/R-95-131, August 1995, available from NTIS, PB95-261616, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

(3) Method 524.2 may be found in "Methods for the Determination of Organic Compounds in Drinking Water)Supplement II", EPA-600/R-92-129, August 1992, available from NTIS, PB92-207703, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.

~~(4) Method 551 may be found in "Methods for the Determination of Organic Compounds in Drinking Water)Supplement I", EPA-600-4-90-020, July 1990, available from NTIS, PB91-146027, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.~~

~~(5) Method 502.2, Rev 2.0 may be found in "Methods for the Determination of Organic Compounds in Drinking Water", EPA-600/4-88-039, December 1988, revised July 1991, available from NTIS, PB91-231480, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (800) 553-6847.~~

These methods are available for copying at the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** 100 North Senate Avenue, Room 1255, Indianapolis, Indiana ~~46204.~~ **46206.** *(Water Pollution Control Board; 327 IAC 8-2-5.3; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1011; filed Aug 24, 1994, 8:15 a.m.: 18 IR 37; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Aug 25, 1997, 8:00 a.m.: 21 IR 49; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1348)*

SECTION 7. 327 IAC 8-2-5.5, PROPOSED TO BE AMENDED AT 23 IR 2565, SECTION 6, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-5.5 Collection of samples for volatile organic compound testing other than total trihalomethanes; community and nontransient noncommunity water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 5.5. (a) Community water systems and nontransient noncommunity water systems shall collect samples for volatile organic compound testing in order to determine compliance with section 5.4 of this rule, beginning with the initial compliance period, as follows:

(1) Ground water systems shall take a minimum of one (1) sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point, unless conditions make another sampling point more representative of each source or treatment plant, or within the distribution system.

(2) Surface water systems (or combined surface/ground) shall take a minimum of one (1) sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point, unless conditions make another sampling point more representative of each source or treatment plant, or within the distribution system.

(3) If the system draws water from more than one (1) source and sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions such as when water representative of all sources is being used.

(4) Each community and nontransient noncommunity water system shall take four (4) consecutive quarterly samples for each contaminant listed in section 5.4 of this rule, except vinyl chloride, during each compliance period, beginning in the initial compliance period.

(5) If the initial monitoring for contaminants listed in section 5.4 of this rule, as allowed by subsection (b), has been completed by December 31, 1992, and the system did not

detect any contaminant listed in section 5.4 of this rule, then each ground and surface water system shall take one (1) sample annually beginning with the initial compliance period.

(6) After a minimum of three (3) years of annual sampling, the commissioner may allow ground water systems with no previous detection of any contaminant listed in section 5.4 of this rule to take one (1) sample during each compliance period.

(7) Each community and nontransient noncommunity ground water system which does not detect a contaminant listed in section 5.4 of this rule may apply to the commissioner for a waiver from the requirements of subdivisions (5) and (6) after completing the initial monitoring. As used in this section, "detection" means greater than or equal to five ten-thousandths (0.0005) milligram per liter. A waiver shall be effective for no more than six (6) years (two (2) compliance periods). The commissioner may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

(8) The commissioner may grant a waiver after evaluating the following factors:

(A) Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the commissioner reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted.

(B) If previous use of the contaminant is unknown or if the contaminant has been used previously, then the following factors shall be used to determine whether a waiver is granted:

(i) Previous analytical results.

(ii) The proximity of the system to a potential point or nonpoint source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.

(iii) The environmental persistence and transport of the contaminants.

(iv) The number of persons served by the public water system, and the proximity of a smaller system to a larger system.

(v) How well the water source is protected against contamination, such as whether it is a surface or ground water system. Ground water systems must consider factors such as the depth of the well, the type of soil, and wellhead protection. Surface water systems must consider watershed protection.

(9) As a condition of the waiver, a ground water system must take one (1) sample at each sampling point during the time the waiver is effective, for example, one (1) sample during two (2) compliance periods or six (6) years, and update its vulnerability assessment considering the factors listed in subdivision (8). Based on this vulnerability assessment, the commissioner must reconfirm that the system is nonvulnerable. If the commissioner does not make this reconfirmation within three (3) years of the initial determination, then the waiver is invalidated and the system is required to sample annually as specified in subdivision (5).

(10) Each community and nontransient noncommunity surface water system which does not detect a contaminant listed in section 5.4 of this rule may apply to the commissioner for a waiver from the requirements of subdivision (5) after completing the initial monitoring. Composite samples from a maximum of five (5) sampling points are allowed provided that the detection limit of the method used for analysis is less than one-fifth ($^1/_5$) of the MCL. Systems meeting this criterion must be determined by the commissioner to be nonvulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the commissioner (if any).

(11) If a contaminant listed in section 5.4 of this rule, except vinyl chloride, is detected at a level exceeding five ten-thousandths (0.0005) milligram per liter in any sample, then the monitoring requirements will be as follows:

(A) The system must monitor quarterly at each sampling point which resulted in a detection.

(B) The commissioner may decrease the quarterly monitoring requirement specified in clause (A) provided it has determined that the system is reliably and consistently below the MCL. In no case shall the commissioner make this determination unless a ground water system takes a minimum of two (2) quarterly samples and a surface water system takes a minimum of four (4) quarterly samples.

(C) If the commissioner determines that the system is reliably and consistently below the MCL, the commissioner may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter or quarters which previously yielded the highest analytical result.

(D) Systems which have three (3) consecutive annual samples with no detection of a contaminant may apply to the commissioner for a waiver as specified in subdivision (7).

(E) Ground systems which have detected one (1) or more two-carbon organic compounds:

(i) trichloroethylene;
(ii) tetrachloroethylene;
(iii) 1,2-dichloroethane;
(iv) 1,1,1-trichloroethane;
(v) cis-1,2-dichloroethylene;
(vi) trans-1,2-dichloroethylene; or
(vii) 1,1-dichloroethylene;

shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one (1) or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the commissioner may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one

(1) sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the commissioner.

(12) Systems which violate the requirements of section 5.4 of this rule, as determined by subdivision (15), must monitor quarterly. After a minimum of four (4) consecutive quarterly samples which show the system is in compliance as specified in subdivision (15) if the commissioner determines that the system is reliably and consistently below the MCL, the system may monitor at the frequency and times specified in subdivision (11)(C).

(13) The commissioner may require a confirmation sample for positive or negative results. If a confirmation sample is required by the commissioner, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by subdivision (15). The commissioner has the discretion to delete results of obvious sampling errors from this calculation.

(14) The commissioner may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five (5) sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth ($^1/_5$) of the MCL. Compositing of samples must be done in the laboratory and analyzed within fourteen (14) days of sample collection **as follows:**

(A) If the concentration in the composite sample is greater than or equal to five ten-thousandths (0.0005) milligram per liter for any contaminant listed in section 5.4 of this rule, then a follow-up sample must be analyzed within fourteen (14) days from each sampling point included in the composite, and be analyzed for that contaminant.

(B) If duplicates of the original sample taken from each sampling point used in the composite sample are available, the system may use the duplicates instead of resampling. The duplicates must be analyzed and the results reported to the commissioner within fourteen (14) days after completing analysis of the composite sample, provided the holding time of the sample is not exceeded.

(C) Compositing may only be permitted by the commissioner at sampling points within a single system if the population served by the system is greater than three thousand three hundred (3,300) persons. In systems serving less than or equal to three thousand three hundred (3,300) persons, the commissioner may permit compositing among different systems provided the five (5) sample limit is maintained.

(D) Compositing of samples prior to gas chromatography (GC) analysis shall be as follows:

(i) Add five (5) milliliters or equal larger amounts of each sample (up to five (5) samples are allowed) to a twenty-five (25) milliliter glass syringe. Special precautions must be made to maintain zero (0) headspace in the syringe.

(ii) The samples must be cooled at four (4) degrees Celsius during this step to minimize volatilization losses.

(iii) Mix well and draw out a five (5) milliliter aliquot for analysis.

(iv) Follow sample introduction, purging, and desorption steps described in the method.

(v) If less than five (5) samples are used for compositing, a proportionately smaller syringe may be used.

(E) Compositing of samples prior to gas chromatography/mass spectrometry (GS/MS) analysis shall be as follows:

(i) Inject five (5) milliliters or larger amounts of each aqueous solution (up to five (5) samples are allowed) into a twenty-five (25) milliliter purging device using the sample introduction technique described in the method.

(ii) The total volume of the sample in the purging device must be twenty-five (25) milliliters.

(iii) Purge and desorb as described in the method.

(15) Compliance with section 5.4 of this rule shall be determined based on the analytical results obtained at each sampling point using the following criteria:

(A) For systems which are conducting monitoring at a frequency greater than annually, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately.

(B) If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the commissioner, the determination of compliance will be based on the average of two (2) samples.

(C) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the commissioner may allow the system to give public notice to only that area served by that portion of the system which is out of compliance.

(b) The commissioner may allow the use of monitoring data collected after January 1, 1988, for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements of this section, the commissioner may use these data (a single sample rather than four (4) quarterly samples) to satisfy the initial monitoring requirement of subsection (a)(4). Systems which use grandfathered samples and do not detect any contaminant listed in section 5.4 of this rule, except vinyl chloride, shall begin monitoring annually in accordance with subsection (a)(5), beginning with the initial compliance period.

(c) The commissioner may increase required monitoring where necessary to detect variations within the system.

(d) To receive certification to conduct analyses for the contaminants in section 5.4 of this rule, excluding vinyl

chloride, each certified laboratory must meet the following requirements:

(1) Successfully analyze performance evaluation (PE) samples provided by EPA, the commissioner, or by a third party with the approval of EPA or the commissioner, at least once a year by each method for which the laboratory desires certification.

(2) Achieve the quantitative acceptance limits under subdivisions (3) and (4) for at least eighty percent (80%) of the regulated organic chemicals in section 5.4 of this rule, excluding vinyl chloride.

(3) Achieve quantitative results on the analyses performed under subdivision (1) ~~of this subsection~~ that are within plus or minus twenty percent (±20%) of the actual amount of the substances in the PE sample when the actual amount is greater than or equal to ten-thousandths milligrams per liter ($ 0.010 mg/l).

(4) Achieve quantitative results on the analyses performed under subdivision (1) that are within plus or minus forty percent (±40%) of the actual amount of the substances in the PE sample when the actual amount is less than ten-thousandths milligrams per liter (< 0.010 mg/l).

(5) Achieve a method detection limit of five ten-thousandths milligram per liter (0.0005 mg/l), according to the procedures in 40 CFR 136, Appendix B*.

(e) To receive certification to conduct analyses for vinyl chloride, the laboratory must meet the following requirements:

(1) Successfully analyze PE samples provided by EPA, the commissioner, or by a third party with the approval of EPA or the commissioner, at least once a year by each method for which the laboratory desires certification.

(2) Achieve quantitative results on the analyses performed under subdivision (1) ~~of this subsection~~ that are within plus or minus forty percent (±40%) of the actual amount of vinyl chloride in the PE sample.

(3) Achieve a method detection limit of five ten-thousandths milligram per liter (0.0005 mg/l), according to the procedures in 40 CFR 136, Appendix B*.

(4) Obtain certification for the contaminants listed in section 5.4 of this rule.

(f) Each public water system shall monitor at the time designated by the commissioner within each compliance period.

(g) The commissioner may increase required monitoring where necessary to detect variations within the system.

(h) The commissioner has the authority to determine compliance or initiate enforcement based upon analytical results or other information.

40 CFR 136, Appendix B is incorporated by reference. **Copies of this regulation may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.** *(Water Pollution Control Board; 327 IAC 8-2-5.5; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1014; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258; filed Aug 24, 1994, 8:15 a.m.: 18 IR 39; errata filed Oct 11, 1994, 2:45 p.m.: 18 IR 531; filed Oct 24, 1997, 4:30 p.m.: 21 IR 936)*

SECTION 8. 327 IAC 8-2-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-7 Microbiological contaminants; maximum contaminant levels for all public water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; 13-18-1; IC 13-18-2

Sec. 7. (a) The microbiological MCL applies to all public water systems and is based on the presence or absence of total coliforms in a sample, rather than coliform density. For a system:

(1) which collects at least forty (40) samples per month, if no more than five percent (5%) of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms; or

(2) which collects fewer than forty (40) samples per month, if no more than one (1) sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) Any fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample, constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in ~~section 15 of this rule,~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16,** this is a violation that may pose an acute risk to health.

(c) A public water system must determine compliance with the MCL for total coliforms in subsections (a) and (b) for each month in which it is required to monitor for total coliforms.

(d) The following are BAT for achieving compliance with the MCL for total coliforms in subsections (a) and (b):

(1) Protection of wells from coliform contamination by appropriate placement and construction.

(2) Maintenance of a disinfectant residual throughout the distribution system.

(3) Proper maintenance of the distribution system, including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system.

(4) Filtration and/or disinfection of surface water, as described in sections 8.5 and 8.6 of this rule, or disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone.

(5) For systems using ground water compliance with the requirements of an EPA approved wellhead protection program developed and implemented under Section 1428 of the Safe Drinking Water Act.

(Water Pollution Control Board; 327 IAC 8-2-7; filed Sep 24, 1987, 3:00 p.m.: 11 IR 707; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1018; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2154)

SECTION 9. 327 IAC 8-2-8.4, PROPOSED TO BE AMENDED AT 23 IR 2572, SECTION 10, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-8.4 Analytical methods for microbiological contaminants

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-11-2; IC 13-14-8; IC 13-18-1; IC 13-18-2

Sec. 8.4. (a) A public water system shall analyze for microbiological contaminants as follows:

(1) The standard sample volume required for total coliform analysis, regardless of analytical method used, is one hundred (100) milliliters.

(2) Public water systems need only determine the presence or absence of total coliforms, and a determination of total coliform density is not required.

(3) Public water systems must conduct total coliform analyses in accordance with one (1) of the following analytical methods:

(A) Total coliform fermentation technique[1, 2, 3, 4] as set forth in Method 9221A* and Method 9221B*.

(B) Total coliform membrane filter technique[5,4] as set forth in Method 9222A*, Method 9222B*, and Method 9222C*.

(C) Presence-absence (P-A) coliform test[3, 5, 4, 6] as set forth in Method 9221D*.

(D) ONPG-MUG test[6] as set forth in Method 9223*.

(E) Colisure test*[8,7].

(F) E*Colite® test*.

(G) m-ColiBlue24® test*.

(4) Public water systems must conduct fecal coliform analysis in accordance with the procedure in this subdivision. When the MTF technique or presence-absence (P-A) coliform test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile three (3) millimeter loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA-approved analytical methods which use a membrane filter, transfer the total coliform-positive culture by one (1) of the following methods:

(A) Remove the membrane containing the total coliform colonies from the substrate with a sterile forceps and carefully curl and insert the membrane into a tube of EC medium. (The laboratory may first remove a small portion of selected colonies for verification.)

(B) Alternately, the laboratory may swab the entire membrane filter surface with a sterile cotton swab and transfer the inoculum to EC medium (do not leave the cotton swab in the EC medium), or inoculate individual total coliform-positive colonies into EC medium.

Gently shake the inoculated EC tubes to ensure adequate mixing and incubate in a water bath at forty-four and one-half (44.5) degrees Celsius, plus or minus two-tenths (0.2) degrees Celsius, for twenty-four (24) hours, plus or minus two (2) hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in Method 9221E, paragraph 1(a)*. Public water systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

(5) Public water systems must conduct analysis of Escherichia coli in accordance with one (1) of the following analytical methods:

(A) EC medium supplemented with fifty (50) micrograms per milliliter of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). EC medium is described in Method 9221E, paragraph 1(a)*. MUG may be added to EC medium before autoclaving. EC medium supplemented with fifty (50) micrograms per milliliter of MUG is commercially available. At least ten (10) milliliters of EC medium supplemented with MUG must be used. The inner inverted fermentation tube may be omitted. The procedure for transferring a total coliform-positive culture to EC medium supplemented with MUG shall be as specified in subdivision (4) for transferring a total coliform-positive culture to EC medium. Observe fluorescence with an ultraviolet light three hundred sixty-six (366) nanometers (preferably with a six (6) watt lamp) in the dark after incubating tube at forty-four and one-half (44.5) degrees Celsius, plus or minus two-tenths (0.2) degrees Celsius for twenty-four (24) hours, plus or minus two (2) hours.

(B) Nutrient agar supplemented with one hundred (100) micrograms per milliliter of MUG (final concentration). Nutrient agar is described in Method 9221E*. This test is used to determine if a total coliform-positive sample, as determined by the membrane filter technique or any other method in which a membrane filter is used contains E. coli. Transfer the membrane filter containing a total coliform colony(ies) to nutrient agar supplemented with one hundred (100) micrograms per milliliter (final concentration) of MUG. After incubating the agar plate at thirty-five (35) degrees Celsius for four (4) hours, observe the colony(ies) under ultraviolet light three hundred sixty-six (366) nanometers (preferably with a six (6) watt lamp) in the dark for fluorescence. If fluorescence is visible, E. coli are present.

(C) Minimal Medium ONPG-MUG (MMO-MUG) Test as described in the article "National Field Evaluation of a

Defined Substrate Methods for the Simultaneous Detection of Total Coliforms and Escherichia coli from Drinking Water: Comparison with Presence-Absence Techniques*". If the MMO-MUG test is total coliform-positive after a twenty-four (24) hour incubation, test the medium for fluorescence with a three hundred sixty-six (366) nanometer ultraviolet light (preferably with a six (6) watt lamp) in the dark. If fluorescence is observed, the sample is E. coli-positive. If fluorescence is questionable (cannot be definitively read) after twenty-four (24) hours incubation, incubate the culture for an additional four (4) hours, but not to exceed twenty-eight (28) hours total, and again test the medium for fluorescence. The MMO-MUG test with hepes buffer in lieu of phosphate buffer is the only approved formulation for the detection of E. coli.

(D) The Colisure test*.

(E) The Membrane Filter Method with MI agar*.

(F) E*Colite® test*.

(G) m-ColiBlue24® test*.

(6) As an option to subdivision (5)(C), a system with a total coliform-positive, MUG-negative, MMO-MUG test may further analyze the culture for the presence of E. coli by transferring a one-tenth (0.1) milliliter, twenty-eight (28) hour MMO-MUG culture to EC medium plus MUG with a pipet. The formulation and incubation conditions of EC medium plus MUG and observation of the results are described in subdivision (5)(A).

(b) Response to a violation shall be as follows:

(1) A public water system which has exceeded the MCL for total coliforms in section 7 of this rule must report the violation to the commissioner no later than the end of the next business day after it learns of the violation and notify the public in accordance with ~~section 15 of this rule.~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.**

(2) A public water system which has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, must report the monitoring violation to the commissioner within ten (10) days after the system discovers the violation, and notify the public in accordance with ~~section 15 of this rule.~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.**

~~†~~**(c)** The time from sample collection to initiation of analysis cannot exceed thirty (30) hours. Systems are encouraged but not required to hold samples below ten (10) degrees Celsius during transit.

(d) The agency strongly recommends that laboratories evaluate the false-positive and negative rates for the method or methods they use for monitoring total coliforms. The agency also encourages laboratories to establish false-positive and negative rates within their own laboratory and sample matrix (drinking water or source water or both) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. The agency suggests that laboratories perform these studies on a minimum of five percent (5%) of all total coliform-positive samples, except for those methods where verification or confirmation or both is already required (for example, the M-Endo and LES Endo Membrane Filter Tests, Standard Total Coliform Fermentation Technique, and Presence-Absence Coliform Test). Methods for establishing false-positive and negative-rates may be based on lactose fermentation, the rapid test for β-galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies, from the manufacturer, or both.

~~[21]~~Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least twenty-five (25) parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform, using lactose broth, is less than ten percent (10%).

~~[32]~~If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half (½) to two-thirds (⅔) after the sample is added.

~~[43]~~No requirement exists to run the completed phase on ten percent (10%) of all total coliform-positive confirmed tubes.

~~[54]~~MI agar may also be used*.

~~[65]~~Six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.

~~[76]~~The OPNG-MUG test is also known as the Autoanalysis Colilert System.

~~[87]~~The Colisure Test may be read after an incubation time of twenty-four (24) hours.

~~[9]The agency strongly recommends that laboratories evaluate the false-positive and negative rates for the method or methods they use for monitoring total coliforms. The agency also encourages laboratories to establish false-positive and negative rates within their own laboratory and sample matrix (drinking water or source water or both) with the intent that if the method they choose has an unacceptable false-positive or negative rate, another method can be used. The agency suggests that laboratories perform these studies on a minimum of five percent (5%) of all total coliform-positive samples, except for those methods where verification or confirmation or both is already required (e.g., the M-Endo and LES Endo Membrane Filter Tests, Standard Total Coliform Fermentation Technique, and Presence-Absence Coliform Test). Methods for establishing false-positive and negative-rates may be based on lactose fermentation, the rapid test for β-galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies, from the manufacturer, or both.~~

*The methods referenced in this section may be obtained as follows:

(1) Methods 9221A, 9221B, 9222A, 9222B, 9222C, 9221D, 9223, and 9221E may be found in "Standard Methods for the Examination of Water and Wastewater", 1992, American Public Health Association, et al., 18th edition, or "Standard Methods for the Examination of Water and Wastewater", 1995, American Public Health Association, et al., 19th edition, available from the American Public Health Association, et al., 1015 Fifteenth Street N.W., Washington, D.C. 20005.

(2) A description of the Colisure test may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.

(3) The minimal medium ONPG-MUG test may be found in "National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and Escherichia coli from Drinking Water: Comparison with Presence-Absence Techniques", (Edberg, et al.), Applied and Environmental Microbiology, Volume 55, pages 1003)1008, April 1989.

(4) Preparation and use of MI agar is set forth in the article, "New medium for the simultaneous detection of total coliform and Escherichia coli in water" by Brenner, K.P., et al., 1993, Applied Environmental Microbiology, 59:3534-3544. Also available from the Office of Water Resource Center (RC-4100), 401 M. Street S.W., Washington, D.C. 20460, EPA/600/J-99/225.

(5) A description of the E*Colite® test, "Presence/Absence for Total Coliforms and E. coli in Water", December 21, 1997, is available from Charm Sciences, Inc., 36 Franklin Street, Malden, Massachusetts 02148-4120.

(6) A description of the m-ColiBlue24® test, August 17, 1999, is available from the Hach Company, 100 Dayton Avenue, Ames, Iowa 50010.

These methods are available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2-8.4; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1023; errata filed Jan 9, 1991, 2:30 p.m.: 14 IR 1070; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2158; filed Aug 25, 1997, 8:00 a.m.: 21 IR 51; errata filed Dec 10, 1997, 3:45 p.m.: 21 IR 1348)*

SECTION 10. 327 IAC 8-2-10.2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-10.2 Monitoring frequency for radioactivity; community water systems

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 10.2. (a) Monitoring requirements for gross alpha particle activity, radium-226, and radium-228 in community water systems are as follows:

(1) Compliance with section 9 of this rule shall be based on the analysis of an annual composite of four (4) consecutive quarterly samples or the average of the analyses of four (4) samples obtained at quarterly intervals as follows:

(A) A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis, provided that the measured gross alpha particle activity does not exceed five (5) picocuri per liter at a confidence level of ninety-five percent (95%) (one and sixty-five hundredths (1.65) σ where σ is the standard deviation of the net counting rate of this sample). In localities where radium-228 may be present in drinking water, it is recommended that the commissioner require radium-226 and/or radium-228 analyses when the gross alpha particle activity exceeds two (2) picocuri per liter.

(B) When the gross alpha particle activity exceeds five (5) picocuri per liter, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds three (3) picocuri per liter, the same or an equivalent sample shall be analyzed for radium-228.

(2) Suppliers of water shall monitor at least once every four (4) years following the procedure required by subdivision (1). At the discretion of the commissioner, when an annual record taken in conformance with subdivision (1) has established that the average annual concentration is less than one-half (½) the MCL established by section 9 of this rule, analysis of a single sample may be substituted for the quarterly sampling procedure required by subdivision (1) as follows:

(A) More frequent monitoring shall be conducted when ordered by the commissioner in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or ground water sources of drinking water.

(B) A supplier of water shall monitor in conformance with subdivision (1) within one (1) year of the introduction of a new water source for a community water system. More frequent monitoring shall be conducted when ordered by the commissioner in the event of possible contamination, or when changes in the distribution system or treatment processing occur which may increase the concentration of radioactivity in finished water.

(C) A community water system using two (2) or more sources having different concentrations of radioactivity shall monitor source water, in addition to water from a free-flowing tap, when ordered by the commissioner.

(D) Monitoring for compliance with section 9 of this rule after the initial period need not include radium-228 except when required by the commissioner, provided that the average annual concentration of radium-228 has been assayed at least once using the quarterly sampling procedure required by subdivision (1).

(E) Suppliers of water shall conduct monitoring of any community water system in which the radium-226 concentration exceeds three (3) picocuri per liter, when ordered by the commissioner.

(3) If the average annual MCL for gross alpha particle activity or total radium as set forth in section 9 of this rule is exceeded, the supplier for a community water system shall report to the commissioner pursuant to section 13 of this rule

and notify the public pursuant to ~~section 15 of this rule.~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.** Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the MCL or until a monitoring schedule as a condition to ~~a variance or~~ **an** enforcement action shall become effective.

(b) Monitoring requirements for manmade radioactivity in community water systems are as follows:

(1) Systems using surface water sources and serving more than one hundred thousand (100,000) persons and such other community water systems as are designated by the commissioner shall be monitored for compliance with section 10 of this rule by analysis of a composite of four (4) consecutive quarterly samples or analysis of four (4) quarterly samples. Compliance with section 10 of this rule may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than fifty (50) picocuri per liter and if the average annual concentrations of tritium and strontium-90 are less than those listed in the table in section 10 of this rule. Provided, that if both radionuclides are present, the sum of their annual dose equivalents to bone marrow shall not exceed four (4) millirem per year as follows:

(A) If the gross beta particle activity exceeds fifty (50) picocuri per liter an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with section 10 of this rule.

(B) Suppliers of water shall conduct additional monitoring, as ordered by the commissioner, to determine the concentration of manmade radioactivity in principal watersheds designated by the commissioner.

(C) At the discretion of the commissioner, suppliers of water utilizing only ground water may be required to monitor for manmade radioactivity.

(2) Suppliers of water shall monitor at least every four (4) years following the procedure given in subdivision (1).

(3) The supplier for any community water system designated by the commissioner as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium as follows:

(A) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three (3) monthly samples. The former is recommended. If the gross beta particle activity in a sample exceeds fifteen (15) picocuri per liter, the same or an equivalent sample shall be analyzed for strontium-89 and cesium-134. If the gross beta particle activity exceeds fifty (50) picocuri per liter, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with section 10 of this rule.

(B) For iodine-131, a composite of five (5) consecutive daily samples shall be analyzed once each quarter. At the direction of the commissioner, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(C) Annual monitoring for strontium-90 and tritium shall be conducted by analysis of a composite of four (4) consecutive quarterly samples or analysis of four (4) quarterly samples. The latter procedure is recommended.

(D) The commissioner may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of manmade radioactivity by the supplier of water where the commissioner determines such data are applicable to a particular community water system.

(4) If the average annual MCL for manmade radioactivity set forth in section 10 of this rule is exceeded, the operator of a community water system shall report to the commissioner pursuant to section 13 of this rule and give notice to the public pursuant to ~~section 15 of this rule.~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16.** Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the MCL or until a monitoring schedule as a condition to ~~a variance or~~ **an** enforcement action shall become effective.

(Water Pollution Control Board; 327 IAC 8-2-10.2; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1029; errata filed Aug 6, 1991, 3:45 p.m.: 14 IR 2258)

SECTION 11. 327 IAC 8-2-13, PROPOSED TO BE AMENDED AT 23 IR 2578, SECTION 13, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-13 Reporting requirements; test results and failure to comply

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 13. (a) Except where a shorter period is specified in this rule, the supplier of water or the certified laboratory, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner, shall report to the commissioner the results of any test measurement or analysis required by this rule within:

(1) the first ten (10) days following the month in which the result is received; or

(2) the first ten (10) days following the end of the required monitoring period as stipulated by the commissioner, whichever is shorter.

(b) The supplier of water or the certified laboratory, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner, shall report to the

commissioner within forty-eight (48) hours of completion of laboratory analysis the failure to comply with any MCL and any other requirement set forth in this rule by telephone or the methods specified in subsection (e) of this section. If notification is made by telephone, the results must follow using one (1) of the methods specified in subsection (e) within forty-eight (48) hours of the telephone notification.

(c) The supplier of water or the certified laboratory, provided the supplier of water has granted permission in writing to the laboratory using forms provided by the commissioner, and that permission is on file with the commissioner, shall report to the commissioner within (48) hours of completion of laboratory analysis any positive total coliform results by telephone or the methods specified in subsection (e). If notification is made by telephone, the results must follow using one (1) of the methods specified in subsection (e) within forty-eight (48) hours of the telephone notification.

(d) The supplier of water, ~~upon initiation~~ **within ten (10) days** of ~~each~~ **completing the** public notification required by ~~section 15 of this rule,~~ **327 IAC 8-2.1-7 through 327 IAC 8-2.1-16, for the initial public notice and any repeat notices,** shall submit to the commissioner a **certification that it has fully complied with the public notification regulations. The public water system must include with this certification a** representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system or to the media.

(e) The submittal of the information required under this section shall be submitted in one (1) of the following manners:

(1) Mail.

(2) Facsimile.

(3) Electronic mail.

(4) Hand delivery.

(5) Other means ~~approved~~ **determined** by the commissioner **to provide the degree of confidentiality, reliability, convenience, and security appropriate to the information to be submitted.**

(Water Pollution Control Board; 327 IAC 8-2-13; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1030)

SECTION 12. 327 IAC 8-2-14, PROPOSED TO BE AMENDED AT 23 IR 2579, SECTION 14, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-14 Reporting and record keeping requirements; systems that provide filtration

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9; IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 14. (a) Effective June 29, 1993, a public water system that uses a surface water source or a ground water source under the direct influence of surface water and provides filtration treatment must report monthly to the commissioner the information specified in this section. Systems shall submit information to the commissioner using the methods specified in section 13(e) of this rule.

(b) Turbidity measurements as required by section 8.8(b) of this rule must be reported within ten (10) days after the end of each month the system serves water to the public. Information that must be reported includes the following:

(1) The total number of filtered water turbidity measurements taken during the month.

(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in section 8.5(c) of this rule for the filtration technology being used.

(3) The date and value of any turbidity measurements taken during the month which exceed five (5) nephelometric turbidity units (NTU).

(c) Disinfection information specified in section 8.8 of this rule must be reported to the commissioner within ten (10) days after the end of each month the system serves water to the public. Information that must be reported includes the following:

(1) For each day, the lowest measurement of residual disinfectant concentration in milligrams per liter in water entering the distribution system.

(2) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below two-tenths (0.2) milligram per liter and when the commissioner was notified of the occurrence.

(3) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring under section 8.6 of this rule:

(A) Number of instances where the residual disinfectant concentration is measured.

(B) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured.

(C) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured.

(D) Number of instances where no residual disinfectant concentration is detected and where HPC is greater than five hundred (500) per milliliter.

(E) Number of instances where the residual disinfectant concentration is not measured and HPC is greater than five hundred (500) per milliliter.

(F) For the current and previous month the system serves water to the public, the value of V in the following formula:

$$V = \frac{c\%d\%e}{a\%b} \times 100$$

Where: a = The value in clause (A).
b = The value in clause (B).
c = The value in clause (C).
d = The value in clause (D).
e = The value in clause (E).

(G) The commissioner may determine, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by section 8.7(3) of this rule and that the system is providing adequate disinfection in the distribution system, the requirements of clauses (A) through (F) do not apply.

(4) A system need not report the data listed in subdivision (1) if all data listed in subdivisions (1) through (3) remain on file at the system and the commissioner determines that the system has submitted all the information required by subdivisions (1) through (3) for at least twelve (12) months.

(d) Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, must report that occurrence to the commissioner as soon as possible, but no later than by the end of the next business day. If at any time the turbidity exceeds five (5) NTU, the system must ~~inform the commissioner~~ **consult with the department of environmental management** as soon as ~~possible,~~ **practical,** but no later than ~~the end of the next business day.~~ **twenty-four (24) hours after the exceedance is known in accordance with the public notification requirements under 327 IAC 8-2.1-9(b)(3).** If at any time the residual falls below two-tenths (0.2) milligram per liter in the water entering the distribution system, the system must notify the commissioner as soon as possible, but no later than the end of the next business day. The system also must notify the commissioner by the end of the next business day whether or not the residual was restored to at least two-tenths (0.2) milligram per liter within four (4) hours. *(Water Pollution Control Board; 327 IAC 8-2-14; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1031; filed Apr 12, 1993, 11:00 a.m.: 16 IR 2163)*

SECTION 13. 327 IAC 8-2-20 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2-20 Record maintenance

Authority: IC 13-13-5; IC 13-14-8-7; IC 13-14-9, IC 13-18-3; IC 13-18-16
Affected: IC 13-18

Sec. 20. Any owner or operator of a public water system subject to the provisions of this rule shall retain on its premises or at a convenient location near its premises the following records:

(1) Records of bacteriological analyses made under this rule shall be kept for not less than five (5) years. Records of chemical and radiological analyses made under this rule shall be kept for not less than ten (10) years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(A) The date, place, and time of sampling, and the name of the person who collected the sample.

(B) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample, or other special purpose sample.

(C) Date of analysis.

(D) Laboratory and person responsible for performing analysis.

(E) The analytical technique/method used.

(F) The results of the analysis.

(2) Records of action taken by the system to correct violations of this rule shall be kept for not less than three (3) years after the last action taken with respect to the particular violation involved.

(3) Copies of any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state, or federal agency, shall be kept for not less than ten (10) years after completion of the sanitary survey involved.

(4) ~~Records concerning a variance granted to the system shall be kept for not less than five (5) years after the expiration of variance.~~ **Copies of public notices issued pursuant to 327 IAC 8-2.1-7 through 327 IAC 8-2.1-16 and certifications made to the primacy agency pursuant to section 13 of this rule must be kept for three (3) years after issuance.**

(Water Pollution Control Board; 327 IAC 8-2-20; filed Dec 28, 1990, 5:10 p.m.: 14 IR 1038)

SECTION 14. 327 IAC 8-2.1-3, PROPOSED TO BE AMENDED AT 23 IR 2586, SECTION 21, IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-3 Content of the reports

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 3. (a) A community water system shall provide to its customers an annual report that contains the information specified in this section and section 4 of this rule.

(b) The report must contain information on the source of the water delivered, including the following:

(1) The source or sources of water delivered by the community water system by including information on:

(A) the type of water, such as surface water or ground water; and

(B) the commonly used name, if any, and location of the body or bodies of water.

(2) If a source water assessment has been completed, the report must notify the consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information. Where a system has received a source water assessment from the commissioner, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the commissioner or written by the operator.

(c) The report must include the following definitions as applicable:

(1) "Maximum contaminant level goal" or "MCLG" means the level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(2) "Maximum contaminant level" or "MCL" means the highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(3) A report that contains data on ~~a contaminant~~ **contaminants** for which the department or EPA ~~has set a treatment technique or an action level~~ **regulates using any of the following terms** must include ~~one (1) or both of~~ the following definitions, as applicable:

(A) "Treatment technique" means a required process intended to reduce the level of a contaminant in drinking water.

(B) "Action level" means the concentration of a contaminant that, if exceeded, triggers treatment or other requirements that a water system shall follow.

(d) A report must include the information specified in this subsection for the following contaminants subject to mandatory monitoring, other than Cryptosporidium:

(1) Contaminants subject to an MCL, action level, or treatment technique, hereafter referred to as regulated contaminants.

(2) Disinfection byproducts or microbial contaminants for which monitoring is required by 40 CFR 141.142* and 40 CFR 141.143*, except as provided in subsection (e)(1), and that are detected in the finished water.

(3) The data relating to these contaminants must be displayed in one (1) table or in several adjacent tables. Any additional monitoring results that a community water system chooses to include in its report must be displayed separately.

(4) The data must be derived from data collected to comply with EPA and department monitoring and analytical requirements during calendar year 1998 for the first report and subsequent calendar years thereafter, except the following:

(A) Where a system is allowed to monitor for regulated contaminants less often than once a year, the table or tables must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five (5) years need be included.

(B) Results of monitoring in compliance with 40 CFR 141.142* and 40 CFR 141.143* need only be included for five (5) years from the date of the last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(5) For detected regulated contaminants listed in section 6(a) of this rule, the table or tables must contain the following information:

(A) The MCL for that contaminant expressed as a number equal to or greater than one and zero tenths (1.0), as listed in section 6(a) of this rule.

(B) The MCLG for that contaminant expressed in the same units as the MCL.

(C) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report shall include the definitions for treatment technique or action level, or both, as appropriate, specified in subsection (c)(4).

(D) For contaminants subject to an MCL, except turbidity and total coliforms, the highest contaminant level used to determine compliance with this rule and the range of detected levels as follows:

(i) When compliance with the MCL is determined annually or less frequently, the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point, the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the average and range of detection expressed in the same units as the MCL.

(E) When turbidity is reported pursuant to 327 IAC 8-2-8.8, the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 327 IAC 8-2-8.8 for the filtration technology being used. The report must include an explanation of the reasons for measuring turbidity.

(F) For lead and copper, the ninetieth percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level.

(G) For total coliform, the highest monthly:

(i) number of positive samples for systems collecting fewer than forty (40) samples per month; or

(ii) percentage of positive samples for systems collecting at least forty (40) samples per month.

(H) For fecal coliform, the total number of positive samples.

(I) The likely source or sources of detected contaminants to the best of the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and must be used when available to the operator. If the operator lacks specific information on the likely source, the report must include one (1) or more of the typical sources for that contaminant listed in section 6(b) of this rule that are most applicable to the system.

(6) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources:

(A) the table must contain a separate column for each service area and the report must identify each separate distribution system; or

(B) the system may produce separate reports tailored to include data for each service area.

(7) The table must clearly identify any data indicating violations of MCLs or treatment techniques, and the report must contain a clear and readily understandable explanation of the violation, including the length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system shall use the relevant language of section 6(c) of this rule.

(e) Each report must contain the following information on Cryptosporidium, radon, and other contaminants:

(1) If the system has performed any monitoring for Cryptosporidium, including monitoring performed to satisfy the requirements of 40 CFR 141.143*, that indicates Cryptosporidium may be present in the source water or the finished water, the report must include:

(A) a summary of the results of the monitoring; and

(B) an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon that indicates radon may be present in the finished water, the report must include:

(A) the results of the monitoring; and

(B) an explanation of the significance of the results.

(3) If the system has performed additional monitoring that indicates the presence of other contaminants in the finished water, the commissioner strongly encourages systems to report any results that may indicate a health concern. To determine if results may indicate a health concern, the commissioner recommends that systems find out if EPA has proposed a National Primary Drinking Water Regulation (NPDWR) or issued a health advisory for that contaminant by calling the Safe Drinking Water Hotline at (800) 426-4791. The commissioner and EPA consider levels detected above a proposed federal or state MCL or health advisory level to indicate possible health concerns. For such contaminants, the commissioner recommends that the report includes:

(A) the results of the monitoring; and

(B) an explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

(f) In addition to the requirements of subsection (d)(5), the report must note any violation of a requirement listed in this subsection that occurred during the year covered by the report, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation. Violations of the following requirements must be included:

(1) Monitoring and reporting of compliance data.

(2) Filtration and disinfection prescribed by 327 IAC 8-2-8.5 and 327 IAC 8-2-8.6. For systems that have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of such equipment or processes that constitutes a violation, the report must include the following language as part of the explanation of potential health effects, "inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.".

(3) Lead and copper control requirements prescribed by 327 IAC 8-2-36 through 327 IAC 8-2-47. For systems that fail to take one (1) or more actions prescribed by 327 IAC 8-2-36(d) or 327 IAC 8-2-40 through 327 IAC 8-2-43, the report must include the applicable language from section 6(c) of this rule for lead or copper, or both.

(4) Treatment techniques for acrylamide and epichlorohydrin prescribed by ~~327 IAC 8-2-3.5.~~ **327 IAC 8-2-35.** For systems that violate ~~327 IAC 8-2-32,~~ **327 IAC 8-2-35,** the report shall include the relevant language from section 6(c) of this rule.

(5) Record keeping of compliance data.

(6) Special monitoring requirements prescribed by 327 IAC 8-2-21.

(7) Violation of the terms of an administrative or judicial order.

(g) The following additional information must be contained in the report:

(1) A brief explanation regarding contaminants that may reasonably be expected to be found in drinking water, including bottled water. This explanation may include the language in clauses (A) through (C), or systems may use their own comparable language. The report must also include the language of clause (D). The language is as follows:

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally-occurring minerals, and in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include the following:

(i) Microbial contaminants, such as viruses and bacteria, that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.

(ii) Inorganic contaminants, such as salts and metals, that can be naturally-occurring or result from urban stormwater run-off, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.

(iii) Pesticides and herbicides, that may come from a variety of sources, such as agriculture, urban stormwater run-off, and residential uses.

(iv) Organic chemical contaminants, including synthetic and volatile organic chemicals, that are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban stormwater run-off, and septic systems.

(v) Radioactive contaminants, that can be naturally-occurring or be the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the department and EPA prescribe regulations that limit the amount of certain contaminants in water provided by public water systems. Federal Drug Administration (FDA) regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

(D) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline at (800) 426-4791.

(2) The telephone number of the owner, operator, or designee of the community water system as a source of additional information concerning the report.

(3) In communities with a large proportion of non-English speaking residents, in which twenty percent (20%) or more of the residents speak the same language other than English, the report must contain information in the appropriate language or languages regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of water. This information may include, but is not limited to, the time and place of regularly scheduled board meetings.

(5) The systems may include such additional information as they deem necessary for public education consistent with, and not detracting from, the purpose of the report.

*The Code of Federal Regulations (CFR) citations are incorporated by reference into this rule and are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water ~~Management,~~ **Quality,** Indiana Government Center-North, Twelfth Floor, Room 1255, 100 North Senate Avenue, Indianapolis, Indiana 46206. *(Water Pollution Control Board; 327 IAC 8-2.1-3; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1899)*

SECTION 15. 327 IAC 8-2.1-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 8-2.1-6 Other required information

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 6. (a) In order to convert MCLs to numbers greater than or equal to one and zero-tenths (1.0) for the required table referenced in section 3 of this rule, a community water system shall use the following table:

Table 6-1: Converting MCL Compliance Values for Consumer Confidence Reports

Contaminant	MCL in Compliance Units (mg/l)	multiply by...	MCL in CCR Units	MCLG in CCR Units
Microbiological contaminants				
1. Total coliform bacteria			5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).	0
2. Fecal coliform and E. coli			A routine sample and a repeat sample are total coliform positive, and one (1) is also fecal coliform or E. coli positive.	0
3. Turbidity			TT (NTU)	n/a
Radioactive contaminants				
4. Beta/photon emitters	4 mrem/year		4 mrem/year	0
5. Alpha emitters	15 pCi/l		15 pCi/l	0
6. Combined radium	5 pCi/l		5 pCi/l	0
Inorganic contaminants				
7. Antimony	0.006	1,000	6 ppb	6
8. Arsenic	0.05	1,000	50 ppb	n/a
9. Asbestos	7 MFL		7 MFL	7
10. Barium	2		2 ppm	2
11. Beryllium	0.004	1,000	4 ppb	4

12. Cadmium	0.005	1,000	5 ppb	5
13. Chromium	0.1	1,000	100 ppb	100
14. Copper	AL = 1.3		AL = 1.3 ppm	1.3
15. Cyanide	0.2	1,000	200 ppb	200
16. Fluoride	4		4 ppm	4
17. Lead	AL = 0.015	1,000	AL = 15 ppb	0
18. Mercury (inorganic)	0.002	1,000	2 ppb	2
19. Nitrate (as nitrogen)	10		10 ppm	10
20. Nitrite (as nitrogen)	1		1 ppm	1
21. Selenium	0.05	1,000	50 ppb	50
22. Thallium	0.002	1,000	2 ppb	0.5
Synthetic organic contaminants including pesticides and herbicides				
23. 2,4-D	0.07	1,000	70 ppb	70
24. 2,4,5-TP (silvex)	0.05	1,000	50 ppb	50
25. Acrylamide			TT	0
26. Alachlor	0.002	1,000	2 ppb	0
27. Atrazine	0.003	1,000	3 ppb	3
28. Benzo(a)pyrene (PAH)	0.0002	1,000,000	200 ppt	0
29. Carbofuran	0.04	1,000	40 ppb	40
30. Chlordane	0.002	1,000	2 ppb	0
31. Dalapon	0.2	1,000	200 ppb	200
32. Di(2-ethylhexyl)adipate	~~4~~ **.4**	1,000	400 ppb	400
33. Di(2-ethylhexyl)phthalate	0.006	1,000	6 ppb	0
34. Dibromochloropropane	0.0002	1,000,000	200 ppt	0
35. Dinoseb	0.007	1,000	7 ppb	7
36. Diquat	0.02	1,000	20 ppb	20
37. Dioxin (2,3,7,8-TCDD)	0.00000003	1,000,000,000	30 ppq	0
38. Endothall	0.1	1,000	100 ppb	100
39. Endrin	0.002	1,000	2 ppb	2
40. Epichlorohydrin			TT	0
41. Ethylene dibromide	0.00005	1,000,000	50 ppt	0
42. Glyphosate	0.7	1,000	700 ppb	700
43. Heptachlor	0.0004	1,000,000	400 ppt	0
44. Heptachlor epoxide	0.0002	1,000,000	200 ppt	0
45. Hexachlorobenzene	0.001	1,000	1 ppb	0
46. Hexachlorocyclopentadiene	0.05	1,000	50 ppb	50
47. Lindane	0.0002	1,000	200 ppt	200
48. Methoxychlor	0.04	1,000	40 ppb	40
49. Oxamyl (vydate)	0.2	1,000	200 ppb	200
50. PCBs (polychlorinated biphenyls)	0.0005	1,000,000	500 ppt	0
51. Pentachlorophenol	0.001	1,000	1 ppb	0
52. Picloram	0.5	1,000	500 ppb	500
53. Simazine	0.004	1,000	4 ppb	4
54. Toxaphene	0.003	1,000	3 ppb	0
Volatile organic contaminants				
55. Benzene	0.005	1,000	5 ppb	0

56. Carbon tetrachloride	0.005	1,000	5 ppb	0
57. Chlorobenzene	0.1	1,000	100 ppb	100
58. o-Dichlorobenzene	0.6	1,000	600 ppb	600
59. p-Dichlorobenzene	0.075	1,000	75 ppb	75
60. 1,2-Dichloroethane	0.005	1,000	5 ppb	0
61. 1,1-Dichloroethylene	0.007	1,000	7 ppb	7
62. cis-1,2-Dichloroethylene	0.07	1,000	70 ppb	70
63. trans-1,2-Dichloroethylene	0.1	1,000	100 ppb	100
64. Dichloromethane	0.005	1,000	5 ppb	0
65. 1,2-Dichloropropane	0.005	1,000	5 ppb	0
66. Ethylbenzene	0.7	1,000	700 ppb	700
67. Styrene	0.1	1,000	100 ppb	100
68. Tetrachloroethylene	0.005	1,000	5 ppb	0
69. 1,2,4-Trichlorobenzene	0.07	1,000	70 ppb	70
70. 1,1,1-Trichloroethane	0.2	1,000	200 ppb	200
71. 1,1,2-Trichloroethane	0.005	1,000	5 ppb	3
72. Trichloroethylene	0.005	1,000	5 ppb	0
73. TTHMs (total trihalomethanes)	0.1	1,000	100 ppb	n/a
74. Toluene	1		1 ppm	1
75. Vinyl chloride	0.002	1,000	2 ppb	0
76. Xylenes	10		10 ppm	10

Key:
AL = Action level.
MCL = Maximum contaminant level.
MCLG = Maximum contaminant level goal.
MFL = Million fibers per liter.
mrem/year = Millirems per year (a measure of radiation absorbed by the body).
NTU = Nephelometric turbidity units.
pCi/l = Picocuries per liter (a measure of radioactivity).
ppm = Parts per million, or milligrams per liter (mg/l).
ppb = Parts per billion, or micrograms per liter (Fg/l).
ppt = Parts per trillion, or nanograms per liter (ng/l).
ppq = Parts per quadrillion, or picograms per liter (pg/l).
TT = Treatment technique.

(b) In order to show potential sources of contamination for the table required by section 3 of this rule, a community water system shall use the following table:

Table 6-2: Regulated Contaminants

Contaminant (units)	MCLG	MCL	Major Sources in Drinking Water
Microbiological contaminants			
1. Total coliform bacteria	0	5% of monthly samples are positive (systems that collect forty (40) or more samples per month); one (1) positive monthly sample (systems that collect fewer than forty (40) samples per month).	Naturally present in the environment.

2. Fecal coliform and E. coli	0	A routine sample and a repeat sample are total coliform positive, and one (1) is also fecal coliform or E. coli positive.	Human and animal fecal waste.
3. Turbidity	n/a	TT	Soil run-off.
Radioactive contaminants			
4. Beta/photon emitters (mrem/year)	0	4	Decay of natural and manmade deposits.
5. Alpha emitters (pCi/l)	0	15	Erosion of natural deposits.
6. Combined radium (pCi/l)	0	5	Erosion of natural deposits.
Inorganic contaminants			
7. Antimony (ppb)	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
8. Arsenic (ppb)	n/a	50	Erosion of natural deposits; run-off from orchards; run-off from glass and electronics production wastes.
9. Asbestos (MFL)	7	7	Decay of asbestos cement water mains; erosion of natural deposits.
10. Barium (ppm)	2	2	Discharge of drilling wastes; discharge from metal refineries; erosion of natural deposits.
11. Beryllium (ppb)	4	4	Discharge from metal refineries and coal-burning factories; discharge from electrical, aerospace, and defense industries.
12. Cadmium (ppb)	5	5	Corrosion of galvanized pipes; erosion of natural deposits; discharge from metal refineries; run-off from waste batteries and paints.
13. Chromium (ppb)	100	100	Discharge from steel and pulp mills; erosion of natural deposits.
14. Copper (ppm)	1.3	AL = 1.3	Corrosion of household plumbing systems; erosion of natural deposits; leaching from wood preservatives.
15. Cyanide (ppb)	200	200	Discharge from steel/metal factories; discharge from plastic and fertilizer factories.
16. Fluoride (ppm)	4	4	Erosion of natural deposits; water additive that promotes strong teeth; discharge from fertilizer and aluminum factories.
17. Lead (ppb)	0	AL = 15	Corrosion of household plumbing systems; erosion of natural deposits.
18. Mercury (inorganic) (ppb)	2	2	Erosion of natural deposits; discharge from refineries and factories; run-off from landfills; run-off from cropland.
19. Nitrate (as nitrogen) (ppm)	10	10	Run-off from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits.
20. Nitrite (as nitrogen) (ppm)	1	1	Run-off from fertilizer use; leaching from septic tanks, sewage; erosion of natural deposits.

21. Selenium (ppb)	50	50	Discharge from petroleum and metal refineries; erosion of natural deposits; discharge from mines.
22. Thallium (ppb)	0.5	2	Leaching from ore-processing sites; discharge from electronics, glass, and drug factories.
Synthetic organic contaminants, including pesticides and herbicides			
23. 2,4-D (ppb)	70	70	Run-off from herbicide used on row crops.
24. 2,4,5-TP (Silvex) (ppb)	50	50	Residue of banned herbicide.
25. Acrylamide	0	TT	Added to water during sewage/wastewater treatment.
26. Alachlor (ppb)	0	2	Run-off from herbicide used on row crops.
27. Atrazine (ppb)	3	3	Run-off from herbicide used on row crops.
28. Benzo(a)pyrene (PAH) (ppt)	0	200	Leaching from linings of water storage tanks and distribution lines.
29. Carbofuran (ppb)	40	40	Leaching of soil fumigant used on rice and alfalfa.
30. Chlordane (ppb)	0	2	Residue of banned termiticide.
31. Dalapon (ppb)	200	200	Run-off from herbicide used on rights-of-way.
32. Di(2-ethylhexyl)adipate (ppb)	400	400	Discharge from chemical factories.
33. Di(2-ethylhexyl)phthalate (ppb)	0	6	Discharge from rubber and chemical factories.
34. Dibromochloropropane (ppt)	0	200	Run-off/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.
35. Dinoseb (ppb)	7	7	Run-off from herbicide used on soybeans and vegetables.
36. Diquat (ppb)	20	20	Run-off from herbicide use.
37. Dioxin (2,3,7,8-TCDD) (ppq)	0	30	Emissions from waste incineration and other combustion; discharge from chemical factories.
38. Endothall (ppb)	100	100	Run-off from herbicide use.
39. Endrin (ppb)	2	2	Residue of banned insecticide.
40. Epichlorohydrin	0	TT	Discharge from industrial chemical factories; an impurity of same water treatment chemicals.
41. Ethylene dibromide (ppt)	0	50	Discharge from petroleum refineries.
42. Glyphosate (ppb)	700	700	Run-off from herbicide use.
43. Heptachlor (ppt)	0	400	Residue of banned termiticide.
44. Heptachlor epoxide (ppt)	0	200	Breakdown of heptachlor.
45. Hexachlorobenzene (ppb)	0	1	Discharge from metal refineries and agricultural chemical factories.
46. Hexachlorocyclopentadiene (ppb)	50	50	Discharge from chemical factories.
47. Lindane (ppt)	200	200	Run-off/leaching from insecticide used on cattle, lumber, gardens.

48. Methoxychlor (ppb)	40	40	Run-off/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.
49. Oxamyl (vydate) (ppb)	200	200	Run-off/leaching from insecticide used on apples, potatoes, and tomatoes.
50. PCBs (polychlorinated biphenyls) (ppt)	0	500	Run-off from landfills; discharge of waste chemicals.
51. Pentachlorophenol (ppb)	0	1	Discharge from wood preserving factories.
52. Picloram (ppb)	500	500	Herbicide run-off.
53. Simazine (ppb)	4	4	Herbicide run-off.
54. Toxaphene (ppb)	0	3	Run-off/leaching from insecticide used on cotton and cattle.
Volatile organic contaminants			
55. Benzene (ppb)	0	5	Discharge from factories; leaching from gas storage tanks and landfills.
56. Carbon tetrachloride (ppb)	0	5	Discharge from chemical plants and other industrial activities.
57. Chlorobenzene (ppb)	100	100	Discharge from chemical and agricultural chemical factories.
58. o-Dichlorobenzene (ppb)	600	600	Discharge from industrial chemical factories.
59. p-Dichlorobenzene (ppb)	75	75	Discharge from industrial chemical factories.
60. 1,2-Dichloroethane (ppb)	0	5	Discharge from industrial chemical factories.
61. 1,1-Dichloroethylene (ppb)	7	7	Discharge from industrial chemical factories.
62. cis-1,2-Dichloroethylene (ppb)	70	70	Discharge from industrial chemical factories.
63. trans-1,2-Dichloroethylene (ppb)	100	100	Discharge from industrial chemical factories.
64. Dichloromethane (ppb)	0	5	Discharge from pharmaceutical and chemical factories.
65. 1,2-Dichloropropane (ppb)	0	5	Discharge from industrial chemical factories.
66. Ethylbenzene (ppb)	700	700	Discharge from petroleum refineries.
67. Styrene (ppb)	100	100	Discharge from rubber and plastic factories; leaching from landfills.
68. Tetrachloroethylene (ppb)	0	5	Discharge from factories and dry cleaners.
69. 1,2,4-Trichlorobenzene (ppb)	70	70	Discharge from textile-finishing factories.
70. 1,1,1-Trichloroethane (ppb)	200	200	Discharge from metal degreasing sites and other factories.
71. 1,1,2-Trichloroethane (ppb)	3	5	Discharge from industrial chemical factories.
72. Trichloroethylene (ppb)	0	5	Discharge from metal degreasing sites and other factories.
73. TTHMs (total trihalomethanes) (ppb)	n/a	100	Byproduct of drinking water chlorination.
74. Toluene (ppm)	1	1	Discharge from petroleum factories.
75. Vinyl chloride (ppb)	0	2	Leaching from PVC piping; discharge from plastics factories.
76. Xylenes (ppm)	10	10	Discharge from petroleum factories; discharge from chemical factories.

Key:
AL = Action level.
MCL = Maximum contaminant level.
MCLG = Maximum contaminant level goal.
MFL = Million fibers per liter.
mrem/year = millirems per year (a measure of radiation absorbed by the body).
NTU = Nephelometric turbidity units.
pCi/l = Picocuries per liter (a measure of radioactivity).
ppm = Parts per million, or milligrams per liter (mg/l).
ppb = Parts per billion, or micrograms per liter (Fg/l).
ppt = Parts per trillion, or nanograms per liter (ng/l).
ppq = Parts per quadrillion, or picograms per liter (pg/l).
TT = Treatment technique.

(c) The ~~following~~ language **in section 17 of this rule** shall be used if there is a violation referenced in section 3 of this rule and health effects language is required **unless alternate language is listed in this subsection as follows:**

~~(1) For microbiological contaminants, the following language shall be used:~~

~~(A) Total coliform. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other potentially harmful bacteria may be present. Coliforms were found in more samples than allowed, and this was a warning of potential problems.~~

~~(B)~~ **(1)** Fecal coliform/E. coli. Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with animal or human wastes. Microbes in these wastes can cause short term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

~~(C) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.~~

~~(2) For radioactive contaminants, the following language shall be used:~~

~~(A) Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.~~

~~(B) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.~~

~~(C) Combined radium 226/228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years have an increased risk of getting cancer.~~

~~(3) For inorganic contaminants, the following language shall be used:~~

~~(A) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.~~

~~(B) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system and may have an increased risk of getting cancer.~~

~~(C) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.~~

~~(D) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.~~

~~(E) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.~~

~~(F) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.~~

~~(G) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.~~

~~(H) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.~~

~~(I) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.~~

~~(J)~~ **(2)** Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.

(K) Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

(L) Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(M) Nitrate. Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(N) Nitrite. Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(O) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail loss, numbness in fingers or toes, and problems with their circulation.

(P) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

(4) For synthetic organic contaminants, including pesticides and herbicides, the following language shall be used:

(A) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(B) 2,4,5-TP (silvex). Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(C) Acrylamide. Some people who drink water containing a high level of acrylamide over a long period of time could have problems with their nervous system or blood and may have an increased risk of getting cancer.

(D) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(E) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(F) Benzo(a)pyrene (PAH). Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(G) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood or nervous or reproductive systems.

(H) Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system and may have an increased risk of getting cancer.

(I) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(J) Di(2-ethylhexyl)adipate. Some people who drink water containing di(2-ethylhexyl)adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.

(K) Di(2-ethylhexyl)phthalate. Some people who drink water containing di(2-ethylhexyl)phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(L) Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(M) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(N) Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(O) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(P) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(Q) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(R) Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems and may have an increased risk of getting cancer.

(S) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys and may have an increased risk of getting cancer.

(T) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(U) Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(V) Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over

many years could experience liver damage and may have an increased risk of getting cancer.

(W) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years may experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

(X) Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(Y) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(Z) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(AA) Oxamyl (vydate). Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(BB) PCBs (polychlorinated biphenyls). Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties and may have an increased risk of getting cancer.

(CC) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys and may have an increased risk of getting cancer.

(DD) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(EE) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(FF) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid and may have an increased risk of getting cancer.

(5) For volatile organic contaminants, the following language shall be used:

(A) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets and may have an increased risk of getting cancer.

(B) Carbon tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(C) Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(D) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(E) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(F) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years have an increased risk of getting cancer.

(G) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(H) cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(I) trans-1,2-Dichloroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(J) Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(K) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increase risk of getting cancer.

(L) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(M) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(N) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver and may have an increased risk of getting cancer.

(O) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(P) 1,1,1-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(Q) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(R) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(S) Total trihalomethanes (TTHMs). Some people who

~~drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems and may have an increased risk of getting cancer.~~

~~(T) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.~~

~~(U) Vinyl chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.~~

~~(V) Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.~~

(Water Pollution Control Board; 327 IAC 8-2.1-6; filed Mar 22, 2000, 3:23 p.m.: 23 IR 1903)

SECTION 16. 327 IAC 8-2.1-7 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-7 Public notification of drinking water violations

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 7. (a) Each of the following owners or operators of a public water system must give notice for all violations of drinking water regulations and for other situations that are listed in subsection (b):

(1) Community water systems.

(2) Nontransient noncommunity water systems.

(3) Transient noncommunity water systems.

(b) The following are violation categories and other situations that require a public notice:

(1) The following drinking water violations:

(A) Failure to comply with an applicable maximum contaminant level (MCL) or maximum residual disinfectant level (MRDL).

(B) Failure to comply with a prescribed treatment technique (TT).

(C) Failure to perform water quality monitoring, as required by the drinking water regulations.

(D) Failure to comply with testing procedures as prescribed by a drinking water regulation.

(2) The following special public notices:

(A) Occurrence of a waterborne disease outbreak or other waterborne emergency.

(B) Exceedance of the nitrate MCL by noncommunity water systems (NCWS), where granted permission by the commissioner under 327 IAC 8-2-4(b).

(C) Exceedance of the secondary maximum contaminant level (SMCL) for fluoride.

(D) Availability of unregulated contaminant monitoring data.

(E) Other violations and situations determined by the commissioner to require a public notice under this subdivision, not already listed.

(c) Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. They are divided as follows:

(1) A Tier 1 public notice is required for drinking water violations and situations with significant potential to have serious adverse effects on human health as a result of short term exposure.

(2) Tier 2 public notice is required for all other drinking water violations and situations with potential to have serious adverse effects on human health.

(3) Tier 3 public notice required for all other drinking water violations and situations not included in Tier 1 and Tier 2.

(d) Public notification requirements are as follows:

(1) Each public water system must provide public notice to persons served by the water system.

(2) Public water systems that sell or otherwise provide drinking water to other public water systems are required to give public notice to the owner or operator of the consecutive system; the consecutive system is responsible for providing public notice to the persons it serves.

(3) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the commissioner may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission from the commissioner for limiting distribution of the notice must be granted in writing.

(4) A copy of the notice must also be sent to the commissioner, within ten (10) days of completion of each public notification. The public water system shall submit to the commissioner a representative copy of each type of notice distributed, published, posted, or made available to the persons served by the system and the media, where appropriate.

(Water Pollution Control Board; 327 IAC 8-2.1-7)

SECTION 17. 327 IAC 8-2.1-8 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-8 Tier 1 public notice; form, manner, and frequency of notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 8. (a) The following violations or situations require a Tier 1 public notice:

(1) Violation of the MCL for total coliforms when fecal coliform or E. coli are present in the water distribution

system as specified in 327 IAC 8-2-7(b), or the water system fails to test for fecal coliforms or E. coli when any repeat sample tests positive for coliform as specified in 327 IAC 8-2-8.3.

(2) Violation of the MCL for nitrate, nitrite, or total nitrate and nitrite, as defined in 327 IAC 8-2-4, or when the water system fails to take a confirmation sample within twenty-four (24) hours of the system's receipt of the first sample showing an exceedance of the nitrate or nitrite MCL, as specified in 327 IAC 8-2-4.1(h)(2).

(3) Exceedance of the nitrate MCL by noncommunity water systems, where permitted to exceed the MCL by the commissioner under 327 IAC 8-2-4.

(4) Violation of the 327 IAC 8-2-8.5(c) treatment technique requirement resulting from a single exceedance of the maximum allowable turbidity limit as identified in section 16 of this rule, where the commissioner determines after consultation that a Tier 1 notice is required or where consultation does not take place within twenty-four (24) hours after the system learns of the violation.

(5) Occurrence of a waterborne disease outbreak, as defined in 327 IAC 8-2-1, or other waterborne emergency. This includes failure or significant interruption in key water treatment processes, a natural disaster that disrupts the water supply or distribution system, or a chemical spill or unexpected loading of possible pathogens into the source water that significantly increases the potential for drinking water contamination.

(6) Other violations or situations with significant potential to have serious adverse effects on human health as a result of short term exposure, as determined by the commissioner either in its regulations or on a case-by-case basis.

(b) Tier 1 public notice needs to be provided as follows:

(1) Provide a public notice as soon as practical but no later than twenty-four (24) hours after the system learns of the violation.

(2) Initiate consultation with the commissioner as soon as practical, but no later than twenty-four (24) hours after the public water system learns of the violation or situation, to determine additional public notice requirements.

(3) Comply with any additional public notification requirements that are established as a result of the consultation with the commissioner, including any repeat notices or direction on the duration of the posted notices. To reach all persons served, such requirements may include:

(A) timing;

(B) form;

(C) manner;

(D) frequency; and

(E) content of repeat notices and other actions designed.

(4) Public water systems must provide the notice within twenty-four (24) hours in a form and manner reasonably calculated to reach all persons served. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and nontransient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one (1) or more of the following forms of delivery:

(A) Appropriate broadcast media such as:

(i) radio; or

(ii) television.

(B) Posting of the notice in conspicuous locations throughout the area served by the water system.

(C) Hand delivery of the notice to persons served by the water system.

(D) Another delivery method approved in writing by the commissioner.

(Water Pollution Control Board; 327 IAC 8-2.1-8)

SECTION 18. 327 IAC 8-2.1-9 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-9 Tier 2 notice; form, manner, and frequency of notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 9. (a) The following violations or situations require a Tier 2 public notice:

(1) All violations of the MCL, MRDL, and treatment technique requirements, except where a Tier 1 notice is required under section 8(a) of this rule or where the commissioner determines a Tier 1 notice is required.

(2) Violations of the monitoring and testing procedure requirements, where the commissioner determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation.

(b) Tier 2 public notice needs to be provided as follows:

(1) Public water systems must provide the public notice as soon as practical, but no later than thirty (30) days after the system learns of the violation. If the public notice is posted, the notice must remain in place for as long as the violation or situation persists, but in no case for less than seven (7) days, even if the violation or situation is resolved. The commissioner may, in appropriate circumstances, allow additional time for the initial notice of up to three (3) months from the date the system learns of the violation. It is not appropriate for the commissioner to grant an extension to the thirty (30) day deadline for any unresolved violation or to allow across-the-board extensions by rule or policy for other violations or situations requiring a Tier 2 public notice. Extensions granted by the commissioner must be in writing.

(2) The public water system must repeat the notice every three (3) months as long as the violation or situation

persists, unless the commissioner determines that appropriate circumstances warrant a different repeat notice frequency. In no circumstance may the repeat notice be given less frequently than once per year. It is not appropriate for the commissioner to allow less frequent repeat notice for an MCL violation under the 327 IAC 8-2-7, 327 IAC 8-2-8, 327 IAC 8-2-8.1, and 327 IAC 8-2-8.3 or a treatment technique violation under 327 IAC 8-2-8.5, 327 IAC 8-2-8.6, and 327 IAC 8-2-8.8. The commissioner determinations allowing repeat notices to be given less frequently than once every three (3) months must be in writing.

(3) If there is a violation of the treatment technique requirement in 327 IAC 8-2-8.5(c) that results from a single exceedance of the maximum allowable turbidity limit, then public water systems must consult with the commissioner as soon as practical but no later than twenty-four (24) hours after the public water system learns of the violation, to determine whether a Tier 1 public notice under section 8(a) of this rule is required to protect public health. When consultation does not take place within the twenty-four (24) hour period, the water system must distribute a Tier 1 notice of the violation within the next twenty-four (24) hours (for example, no later than forty-eight (48) hours after the system learns of the violation), following the requirements under section 8(b) and 8(c) of this rule.

(c) Public water systems must provide the initial public notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(1) Unless directed otherwise by the commissioner in writing, community water systems must provide notice by the following methods:

(A) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system.

(B) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (A). Such persons may include those who do not pay water bills or do not have service connection addresses, including any of the following:

(i) House renters.

(ii) Apartment dwellers.

(iii) University students.

(iv) Nursing home patients.

(v) Prison inmates.

(C) Other methods may include any of the following:

(i) Publication in a local newspaper.

(ii) Delivery of multiple copies for distribution by customers that provide their drinking water to others, such as:

(AA) apartment building owners; or

(BB) large private employers.

(iii) Posting in public places served by the system or on the Internet.

(iv) Delivery to community organizations.

(2) Unless directed otherwise by the commissioner in writing, noncommunity water systems must provide notice by the following methods:

(A) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system.

(B) By mail or direct delivery to each customer and service connection if known.

(C) Any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice required in clauses (A) and (B). Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include:

(i) publication in a local newspaper or newsletter distributed to customers;

(ii) use of e-mail to notify employees or students; or

(iii) delivery of multiple copies in central locations, such as community centers.

(Water Pollution Control Board; 327 IAC 8-2.1-9)

SECTION 19. 327 IAC 8-2.1-10 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-10 Tier 3 public notice; form, manner, and frequency of notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 10. (a) The following violations or situations require a Tier 3 public notice:

(1) Monitoring violations under 327 IAC 8-2, except where a Tier 1 notice is required under section 8 of this rule or where the commissioner determines that a Tier 2 notice is required.

(2) Failure to comply with a testing procedure established in 327 IAC 8-2, except where a Tier 1 notice is required under section 8(a) of this rule or where the commissioner determines that a Tier 2 notice is required.

(3) Exceedance of the fluoride secondary maximum contaminant level (SMCL) as required under section 13 of this rule.

(b) Tier 3 public notice needs to be provided as follows:

(1) Public water systems must provide the public notice not later than one (1) year after the public water system learns of the violation or situation. Following the initial

notice, the public water system must repeat the notice annually for as long as the violation or other situation persists. If the public notice is posted, the notice must remain in place for as long as the violation or other situation persists, but in no case less than seven (7) days even if the violation or situation is resolved.

(2) Instead of individual Tier 3 public notices, a public water system may use an annual report detailing all violations and situations that occurred during the previous twelve (12) months, as long as the timing requirements of subdivision (1) are met.

(c) Public water systems must provide the initial notice and any repeat notices in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must, at a minimum, meet the following requirements:

(1) Unless directed otherwise by the commissioner in writing, community water systems must provide notice by the following methods:

(A) Mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system.

(B) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (A). These persons may include those who do not pay water bills or do not have service connection addresses, such as any of the following:

(i) House renters.

(ii) Apartment dwellers.

(iii) University students.

(iv) Nursing home patients.

(v) Prison inmates.

(C) Other methods may include any of the following:

(i) Publication in a local newspaper.

(ii) Delivery of multiple copies for distribution by customers that provide their drinking water to others, such as:

(AA) apartment building owners; or

(BB) large private employers.

(iii) Posting in public places or on the Internet.

(iv) Delivery to community organizations.

(2) Unless directed otherwise by the commissioner in writing, noncommunity water systems must provide notice by the following methods:

(A) Posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection if known.

(B) Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in item (i). Such persons may include those who may not see a posted notice because the notice is not in a location they routinely pass by. Other methods may include:

(i) publication in a local newspaper or newsletter distributed to customers;

(ii) use of e-mail to notify employees or students; or

(iii) delivery of multiple copies in central locations such community centers.

(d) For community water systems, the Consumer Confidence Report (CCR) required under sections 1 through 6 of this rule may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices as long as:

(1) the CCR is provided to persons served no later than twelve (12) months after the system learns of the violation or situation as required in this section;

(2) the Tier 3 notice contained in the CCR follows the content requirements under section 11 of this rule; and

(3) the CCR is distributed following the delivery requirements under subsection (c).

(Water Pollution Control Board; 327 IAC 8-2.1-10)

SECTION 20. 327 IAC 8-2.1-11 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-11 Contents of the public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 11. (a) When a public water system violates a drinking water regulation or has a situation requiring public notification, each public notice must include the following elements:

(1) A description of the violation or situation, including the contaminant or contaminants of concern and the contaminant level or levels as applicable.

(2) When the violation or situation occurred.

(3) Any potential adverse health effects from the violation or situation, including the standard language under subsection (c)(1) or (c)(2), whichever is applicable.

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water.

(5) Whether alternative water supplies should be used.

(6) What actions consumers should take, including when they should seek medical help, if known.

(7) What the system is doing to correct the violation or situation.

(8) When the water system expects to return to compliance or resolve the situation.

(9) The name, business address, and phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice.

(10) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under subsection (c)(3), where applicable.

(b) The following requirements need to be included when a public notice is presented:

(1) Each public notice must do the following:

(A) Must be displayed in a conspicuous way when printed or posted.

(B) Must not contain overly technical language or very small print.

(C) Must not be formatted in a way that defeats the purpose of the notice.

(D) Must not contain language that nullifies the purpose of the notice.

(2) In communities with a large proportion of non-English speaking residents, in which twenty percent (20%) or more of the residents speak the same language other than English, the notice must contain information in the appropriate language or languages regarding the importance of the notice or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the notice or assistance in the appropriate language or languages.

(c) Public water systems are required to include the following standard language in their public notice:

(1) Standard health effects language for MCL or MRDL violations and treatment technique violations. Public water systems must include in each public notice the health effects language specified in section 17 of this rule corresponding to each MCL, MRDL, and treatment technique violation listed in section 16 of this rule.

(2) Public water systems must include standard language in their notice about monitoring and testing procedure violations, including language necessary to fill in the blanks, for all monitoring and testing procedure violations listed in section 16 of this rule. The standard language must state, "We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During [compliance period], we "did not monitor or test" or "did not complete all monitoring or testing" for [contaminant(s)], and therefore cannot be sure of the quality of your drinking water during that time.".

(3) Public water systems must include standard language in their notice to encourage the distribution of the public notice to all persons served. Where applicable, the standard language must state, "Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.".

(Water Pollution Control Board; 327 IAC 8-2.1-11)

SECTION 21. 327 IAC 8-2.1-12 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-12 Notice to new billing units or new customers

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 12. (a) Community water systems must give a copy of the most recent public notice for any continuing violation or other ongoing situations requiring a public notice to all new billing units or new customers prior to or at the time service begins.

(b) Noncommunity water systems must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation or other situation requiring a public notice for as long as the violation or other situation persists. *(Water Pollution Control Board; 327 IAC 8-2.1-12)*

SECTION 22. 327 IAC 8-2.1-13 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-13 Special notice for exceedance of the SMCL for fluoride

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 13. (a) A community water system that exceeds the fluoride secondary maximum contaminant level (SMCL) of two (2) milligrams per liter as specified in 40 CFR § 143.3*, determined by the last single sample taken in accordance with 327 IAC 8-2-4.1, but does not exceed the maximum contaminant level (MCL) of four (4) milligrams per liter for fluoride as specified in 327 IAC 8-2-4, must provide the public notice in subsection (c) to persons served. Public notice must be provided as soon as practical, but no later than twelve (12) months from the day the water system learns of the exceedance. A copy of the notice must also be sent to all new billing units and new customers at the time service begins and to the state public health officer. The public water system must repeat the notice at least annually for as long as the SMCL is exceeded. If the public notice is posted, the notice must remain in place for as long as the SMCL is exceeded, but in no case less than seven (7) days even if the exceedance is eliminated. On a case-by-case basis, the commissioner may require an initial notice sooner

than twelve (12) months and repeat notices more frequently than annually.

(b) The form and manner of the public notice, including repeat notices, must follow the requirements for a Tier 3 public notice in sections 10(c), 10(d)(1), and 10(d)(3) of this rule.

(c) The notice must contain the standard language, including the language necessary to fill in the blanks, that states, "This is an alert about your drinking water and a cosmetic dental problem that might affect children under nine (9) years of age. At low levels, fluoride can help prevent cavities, but children drinking water containing more than two (2) milligrams per liter (mg/l) of fluoride may develop cosmetic discoloration of their permanent teeth (dental fluorosis). The drinking water provided by your community water system [name] has a fluoride concentration of [insert value] mg/l. Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums. Children under nine (9) should be provided with alternative sources of drinking water or water that has been treated to remove the fluoride to avoid the possibility of staining and pitting of their permanent teeth. You may also want to contact your dentist about proper use by young children of fluoride-containing products. Older children and adults may safely drink the water. Drinking water containing more than four (4) mg/L of fluoride (the U.S. Environmental Protection Agency's and Indiana Department of Environmental Management's drinking water standard) can increase your risk of developing bone disease. Your drinking water does not contain more than four (4) mg/l of fluoride, but we're required to notify you when we discover that the fluoride levels in your drinking water exceed two (2) mg/l because of this cosmetic dental problem. For more information, please call [name of water system contact] of [name of community water system] at [phone number]. Some home water treatment units are also available to remove fluoride from drinking water. To learn more about available home water treatment units, you may call NSF International at 1-877-8-NSF-HELP.".

***40 CFR 143.3 is incorporated by reference and is available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.** *(Water Pollution Control Board; 327 IAC 8-2.1-13)*

SECTION 23. 327 IAC 8-2.1-14 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-14 Special notice for nitrate exceedances above MCL by noncommunity water systems; granted permission by the commissioner under 327 IAC 8-2-4(b)

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 14. (a) The owner or operator of a noncommunity water system granted permission by the commissioner under 327 IAC 8-2-4(b) to exceed the nitrate MCL must provide notice to persons served according to the requirements for a Tier 1 notice under 327 IAC 8-2-8.1.

(b) Noncommunity water systems granted permission by the commissioner to exceed the nitrate MCL under 327 IAC 8-2-4(b) must provide continuous posting of:

(1) the fact that nitrate levels exceed ten (10) milligrams per liter; and

(2) the potential health effects of exposure;

in accordance with the requirements for Tier 1 notice delivery under section 8 of this rule and the content requirements under section 11 of this rule. *(Water Pollution Control Board; 327 IAC 8-2.1-14)*

SECTION 24. 327 IAC 8-2.1-15 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-15 Notice by the commissioner on behalf of the public water system

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 15. (a) The commissioner may give the notice required by sections 7 through 14 of this rule, this section, and sections 16 and 17 of this rule on behalf of the owner and operator of the public water system if the commissioner complies with this section.

(b) The owner or operator of the public water system remains responsible for ensuring that this section is met. *(Water Pollution Control Board; 327 IAC 8-2.1-15)*

SECTION 25. 327 IAC 8-2.1-16 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-16 Drinking water violations; other situations requiring public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 16. Drinking water violations and other situations that require public notice according to this rule are contained in the following table:

Table 16. Drinking Water Violations and Other Situations Requiring Public Notice				
Contaminant	MCL/MRDL/TT/AL Violations		Monitoring and Testing Procedure Violations	
	Tier of Public Notice Required	Citation	Tier of Public Notice Required	Citation
I. Violations of Drinking Water Regulations:				
A. Microbiological Contaminants				
1. Total coliform	2	327 IAC 8-2-7(a)	3	327 IAC 8-2-8 327 IAC 8-2-8.1 327 IAC 8-2-8(f) 327 IAC 8-2-8.2 327 IAC 8-2-8.3
2. Fecal coliform/E. coli	1	327 IAC 8-2-7(b)	1, 3	327 IAC 8-2-8.3
3. Turbidity TT (resulting from a single exceedance of maximum allowable turbidity levels)	2,1	327 IAC 8-2-8.5(a)	3	327 IAC 8-2-8.8(b)
4. Surface Water Treatment Rule violations, other than violations resulting from single exceedance of maximum allowable turbidity level (TT)	2	327 IAC 8-2-8.5 327 IAC 8-2-8.6	3	327 IAC 8-2-8.8
B. Inorganic Chemicals (IOCs)				
1. Antimony	2	327 IAC 8-2-4-(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
2. Arsenic	2	327 IAC 8-2-4(d) 327 IAC 8-2-4.1(l)(5)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(l)(3) 327 IAC 8-2-4.1(l)(4)
3. Asbestos (fibers >10 µm)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(d)
4. Barium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
5. Beryllium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
6. Cadmium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
7. Chromium (total)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
8. Cyanide	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
				327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
10. Mercury (inorganic)	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
11. Nitrate	1	327 IAC 8-2-4(b)	1, 3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(f) 327 IAC 8-2-4.1(h)(2)
12. Nitrite	1	327 IAC 8-2-4(b)	1, 3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(g) 327 IAC 8-2-4.1(h)(2)
13. Total Nitrate and Nitrite	1	327 IAC 8-2-4(b)	3	327 IAC 8-2-4.1(c)
14. Selenium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)

15. Thallium	2	327 IAC 8-2-4(d)	3	327 IAC 8-2-4.1(c) 327 IAC 8-2-4.1(e)
C. Lead and Copper Rule				
1. Lead and Copper Rule (TT)	2	327 IAC 8-2-36 327 IAC 8-2-40 327 IAC 8-2-41 327 IAC 8-2-42 327 IAC 8-2-43 327 IAC 8-2-44	3	327 IAC 8-2-37 327 IAC 8-2-38 327 IAC 8-2-39 327 IAC 8-2-45
D. Synthetic Organic Chemicals (SOCs)				
1. 2,4-D	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
2. 2,4,5-TP (Silvex)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
3. Alachlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
4. Atrazine	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
5. Benzo(a)pyrene (PAHs)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
6. Carbofuran	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
7. Chlordane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
8. Dalapon	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
9. Di (2-ethylhexyl) adipate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
10. Di (2-ethylhexyl) phthalate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
11. Dibromochloropropane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
12. Dinoseb	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
13. Dioxin (2,3,7,8-TCDD)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
14. Diquat	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
15. Endothall	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
16. Endrin	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
17. Ethylene dibromide	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
18. Glyphosate	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
19. Heptachlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
20. Heptachlor epoxide	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
21. Hexachlorobenzene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
22. Hexachlorocyclo-pentadiene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
23. Lindane	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
24. Methoxychlor	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
25. Oxamyl (Vydate)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
26. Pentachlorophenol	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
27. Picloram	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
28. Polychlorinated biphenyls (PCBs)	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
29. Simazine	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
30. Toxaphene	2	327 IAC 8-2-5(a)	3	327 IAC 8-2-5.1
E. Volatile Organic Chemicals (VOCs)				
1. Benzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
2. Carbon tetrachloride	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
3. Chlorobenzene (monochlorobenzene)	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
4. o-Dichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
5. p-Dichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
6. 1,2-Dichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
7. 1,1-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
8. cis-1,2-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
9. trans-1,2-Dichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
10. Dichloromethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5

11. 1,2-Dichloropropane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
12. Ethylbenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
13. Styrene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
14. Tetrachloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
15. Toluene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
16. 1,2,4-Trichlorobenzene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
17. 1,1,1-Trichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
18. 1,1,2-Trichloroethane	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
19. Trichloroethylene	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
20. Vinyl chloride	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
21. Xylenes (total)	2	327 IAC 8-2-5.4(a)	3	327 IAC 8-2-5.5
F. Radioactive Contaminants				
1. Beta/photon emitters	2	327 IAC 8-2-10	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(b)
2. Alpha emitters	2	327 IAC 8-2-9(2)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
3. Combined radium (226 and 228)	2	327 IAC 8-2-9(1)	3	327 IAC 8-2-10.2 327 IAC 8-2-10.2(a)
G. Disinfection Byproducts (DBPs). Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of DBPs in drinking water.				
1. Total trihalomethanes (TTHMs)	2	327 IAC 8-2-5(a) and 327 IAC 8-2-5(c)	3	327 IAC 8-2-5.3
H. Other Treatment Techniques				
1. Acrylamide (TT)	2	327 IAC 8-2-35	N/A	N/A
2. Epichlorohydrin (TT)	2	327 IAC 8-2-35	N/A	N/A
II. Unregulated Contaminant Monitoring:				
A. Nickel	N/A	N/A	3	327 IAC 8-2-4.1(e)
III. Other Situations Requiring Public Notification:				
A. Fluoride secondary maximum contaminant level (SMCL) exceedance	3	40 CFR § 143.3*	N/A	N/A
B. Exceedance of nitrate MCL for noncommunity systems, as allowed by the commissioner	1	327 IAC 8-2-4(b)	N/A	N/A
C. Waterborne disease outbreak	1	327 IAC 8-2-1	N/A	N/A
D. Other waterborne emergency	1	N/A	N/A	N/A
E. Other situations as determined by the commissioner	1, 2, 3	N/A	N/A	N/A
Key:				
MCL - Maximum contaminant level				
TT - Treatment Technique				
Violations of Drinking Water Regulations is used here to included violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.				

(1) Violations and other situations not listed in this table such as reporting violations and failure to prepare Consumer Confidence Report do not require notice, unless otherwise determined by the commissioner. The commissioner may, at their option, also require a more stringent public notice tier such as Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3 for specific violations and situations listed in the above.

(2) Failure to test for fecal coliform or E. coli is a Tier 1 violation if testing is not done after any repeat sample tests positive for coliform. All other total coliform monitoring and testing procedure violations are Tier 3.

(3) Systems with treatment technique violations involving a single exceedance of maximum turbidity limit under the Surface Water Treatment Rule (SWTR) are required to initiate consultation with the commissioner within twenty-four (24) hours after learning of the violation. Based on this consultation, the commissioner may subse-

quently decide to elevate the violation to Tier 1. If a system is unable to make contact with the commissioner in the twenty-four (24) hour period, the violation is automatically elevated to Tier 1.
(4) Failure to take a confirmation sample within twenty-four (24) hours for nitrate or nitrite after an initial sample exceeds the MCL is a Tier 1 Violation. Other monitoring violations for nitrate are Tier 3.
(5) Other waterborne emergencies require a Tier 1 public notice under section 8(a) of this rule for situations that do not meet the definition of a waterborne disease outbreak given in 327 IAC 8-2-1, but that still have the potential to have serious adverse effects on health as a result of short-term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water.

(6) The commissioner may place other situations in any tier believed appropriate, based on threat to public health.

***40 CFR 143.3 is incorporated by reference and is available for copying at the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room 1255, Indianapolis, Indiana 46206.** *(Water Pollution Control Board; 327 IAC 8-2.1-16)*

SECTION 26. 327 IAC 8-2.1-17 IS ADDED TO READ AS FOLLOWS:

327 IAC 8-2.1-17 Drinking water violations; standard health effects language for public notice

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-18-16-6; IC 13-18-16-7; IC 13-18-16-9
Affected: IC 13-18-16

Sec. 17. A public water system must comply with the standard health effects language for public notification contained in the following table:

Table 17. Standard Health Effects Language for Public Notification

Contaminant	MCLG mg/L	MCL mg/L	Standard Health Effects Language for Public Notification
Drinking Water Regulations:			
A. Microbiological Contaminants			
1a. Total coliform	**Zero**	**See footnote**	**Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.**
1b. Fecal coliform/E. coli	**Zero**	**Zero**	**Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.**
2a. Turbidity (MCL)	**None**	**1 NTU/ 5 NTU**	**Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.**
2b. Turbidity (SWTR TT)	**None**	**TT**	**Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.**
B. Inorganic Chemicals (IOCs)			
3. Antimony	**0.006**	**0.006**	**Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.**
4. Arsenic	**None**	**0.05**	**Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.**

5. Asbestos (>10 µm)	**7 MFL**	**7 MFL**	**Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.**
6. Barium	**2**	**2**	**Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.**
7. Beryllium	**0.004**	**0.004**	**Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.**
8. Cadmium	**0.005**	**0.005**	**Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.**
9. Chromium (total)	**0.1**	**0.1**	**Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.**
10. Cyanide	**0.2**	**0.2**	**Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.**
11. Fluoride	**4.0**	**4.0**	**Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.**
12. Mercury (inorganic)	**0.002**	**0.002**	**Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.**
13. Nitrate	**10**	**10**	**Infants below the age of six (6) months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.**
14. Nitrite	**1**	**1**	**Infants below the age of six (6) months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.**
15. Total Nitrate and Nitrite	**10**	**10**	**Infants below the age of six (6) months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.**
16. Selenium	**0.05**	**0.05**	**Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.**
17. Thallium	**0.0005**	**0.002**	**Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.**
C. Lead and Copper Rule			
18. Lead	**Zero**	**TT**	**Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.**
19. Copper	**1.3**	**TT**	**Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.**

D. Synthetic Organic Chemicals (SOCs)			
20. 2,4-D	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
21. 2,4,5-TP (Silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
22. Alachlor	Zero	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
23. Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
24. Benzo(a)pyrene (PAHs)	Zero	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
25. Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
26. Chlordane	Zero	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
27. Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
28. Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
29. Di (2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
30. Dibromochloropropane (DBCP)	Zero	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
31. Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
32. Dioxin (2,3,7,8-TCDD)	Zero	3×10^{-8}	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
33. Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
34. Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
35. Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
36. Ethylene dibromide	Zero	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
37. Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

38. Heptachlor	**Zero**	**0.0004**	**Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.**
39. Heptachlor epoxide	**Zero**	**0.0002**	**Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.**
40. Hexachlorobenzene	**Zero**	**0.001**	**Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.**
41. Hexachlorocyclo-pentadiene	**0.05**	**0.05**	**Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience prob-lems with their kidneys or stomach.**
42. Lindane	**0.0002**	**0.0002**	**Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.**
43. Methoxychlor	**0.04**	**0.04**	**Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.**
44. Oxamyl (Vydate)	**0.2**	**0.2**	**Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.**
45. Pentachlorophenol	**Zero**	**0.001**	**Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.**
46. Picloram	**0.5**	**0.5**	**Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.**
47. Polychlorinated bi-phenyls (PCBs)	**Zero**	**0.0005**	**Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.**
48. Simazine	**0.004**	**0.004**	**Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.**
49. Toxaphene	**Zero**	**0.003**	**Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.**
E. Volatile Organic Chemicals (VOCs)			
50. Benzene	**Zero**	**0.005**	**Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.**
51. Carbon tetrachloride	**Zero**	**0.005**	**Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.**
52. Chlorobenzene (monochlorobenzene)	**0.1**	**0.1**	**Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.**
53. o-Dichlorobenzene	**0.6**	**0.6**	**Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.**
54. p-Dichlorobenzene	**0.075**	**0.075**	**Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.**
55. 1,2-Dichloroethane	**Zero**	**0.005**	**Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.**

56. 1,1-Dichloroethylene	**0.007**	**0.007**	**Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.**
57. cis-1,2-Dichloroethylene	**0.07**	**0.07**	**Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.**
58. trans-1,2-Dichloroethylene	**0.1**	**0.1**	**Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.**
59. Dichloromethane	**Zero**	**0.005**	**Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.**
60. 1,2-Dichloropropane	**Zero**	**0.005**	**Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.**
61. Ethylbenzene	**0.7**	**0.7**	**Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.**
62. Styrene	**0.1**	**0.1**	**Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.**
63. Tetrachloroethylene	**Zero**	**0.005**	**Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.**
64. Toluene	**1**	**1**	**Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.**
65. 1,2,4-Trichlorobenzene	**0.07**	**0.07**	**Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.**
66. 1,1,1-Trichloroethane	**0.2**	**0.2**	**Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.**
67. 1,1,2-Trichloroethane	**0.003**	**0.005**	**Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.**
68. Trichloroethylene	**Zero**	**0.005**	**Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.**
69. Vinyl chloride	**Zero**	**0.002**	**Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.**
70. Xylenes (total)	**10**	**10**	**Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.**
F. Radioactive Contaminants			
71. Beta/photon emitters	**Zero**	**4 mrem/yr**	**Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.**
72. Alpha emitters	**Zero**	**15 pCi/L**	**Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.**

73. Combined radium (226 and 228)	**Zero**	**5 pCi/L**	**Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.**
G. Disinfection Byproducts (DBPs): Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water.			
74. Total trihalomethanes (TTHMs)	**N/A**	**0.10/ 0.080**	**Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.**
H. Other Treatment Techniques			
75. Acrylamide	**Zero**	**TT**	**Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.**
76. Epichlorohydrin	**Zero**	**TT**	**Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.**

Key:
MCLG - Maximum contaminant level goal
MCL - Maximum contaminant level
NTU - Nephelometric turbidity unit
TT - Treatment technique
MFL - Millions of fiber per liter
Action Level (Lead) = 0.015 mg/L
Action Level (Copper) = 1.3 mg/L
mrem–millirems per year
ppq–picocuries per liter

(1) For water systems analyzing at least forty (40) samples per month, no more than five percent (5.0%) of the monthly samples may be positive for total coliforms. For systems analyzing fewer than forty (40) samples per month, no more than one (1) sample per month may be positive for total coliforms.

(2) The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

(3) SWTR treatment technique violations that involve turbidity exceedances may use the health effects language for turbidity instead.

(4) The bacteria detected by heterotrophic plate count (HPC) are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

(5) The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

(Water Pollution Control Board; 327 IAC 8-2.1-17)

SECTION 27. THE FOLLOWING ARE REPEALED: 327 IAC 8-2-15; 327 IAC 8-2-16; 327 IAC 8-2-17; 327 IAC 8-2-18.

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 8, 2001 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Water Pollution Control Board will hold a public hearing on proposed rules concerning drinking water notification.

The purpose of this hearing is to receive comments from the public prior to final adoption of this rule by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed new rule. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Section, Office of Water Quality, (317) 232-8635 or (800) 451-6027 (in Indiana).

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-1785 (V) or (317) 232-7589 (TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Mary Ellen Gray
Planning Branch Chief
Office of Water Quality
Indiana Department of Environmental Management

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

Proposed Rule
LSA Document #01-214

DIGEST

Amends 405 IAC 5-31-8 to eliminate bed hold days for Medicaid certified and enrolled nursing facilities with less than 90% occupancy. Effective 30 days after filing with the secretary of state.

405 IAC 5-31-8

SECTION 1. 405 IAC 5-31-8 IS AMENDED TO READ AS FOLLOWS:

405 IAC 5-31-8 Reservation of nursing facility beds
Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-1-15; IC 12-15-21-2
Affected: IC 12-13-7-3; IC 12-15

Sec. 8. (a) Although it is not mandatory for facilities to reserve beds, Medicaid will reimburse for reserving beds for Medicaid recipients at one-half (½) the per diem rate provided that the criteria as set out in this section are met.

(b) Hospitalization must be ordered by the physician for treatment of an acute condition that cannot be treated in the nursing facility. The total length of time allowed for payment of a reserved bed for a single hospital stay is fifteen (15) days. If the recipient requires hospitalization longer than the fifteen (15) consecutive days, he or she must be discharged from the nursing facility.

(c) A leave of absence must be for therapeutic reasons, as prescribed by the attending physician and as indicated in the recipient's plan of care. The total length of time allotted for therapeutic leaves in any calendar year is ~~eighteen (18) days for skilled level of care and~~ thirty (30) days. ~~for intermediate level of care.~~ The leave days need not be consecutive.

(d) Although prior authorization by the office is not required to reserve a bed, a physician's order for the hospitalization or therapeutic leave must be on file in the facility.

(e) Requests for reimbursement of nursing facility services shall be expressed in units of full days. A day begins at midnight and ends twenty-four (24) hours later. The midnight-to-midnight method must be used when reporting days of service, even if the health facility uses a different definition for statistical or other purposes. The day of discharge is not covered.

(f) In no instance will Medicaid reimburse a nursing facility for reserving beds for Medicaid recipients when the nursing facility has an occupancy rate of less than ninety percent (90%). *(Office of the Secretary of Family and Social Services; 405 IAC 5-31-8; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3362; filed Sep 27, 1999, 8:55 a.m.: 23 IR 322)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 22, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Auditorium, Indianapolis, Indiana the Office of the Secretary of Family and Social Services will hold a public hearing on proposed amendments to eliminate bed hold days for Medicaid certified and enrolled nursing facilities with less than 90% occupancy. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John Hamilton
Secretary
Office of the Secretary of Family and Social Services

TITLE 440 DIVISION OF MENTAL HEALTH

Proposed Rule
LSA Document #01-53

DIGEST

Adds 440 IAC 9-2-4, 440 IAC 9-2-5, and 440 IAC 9-2-6 to establish standards and requirements for community mental health centers and certified managed care providers regarding acute stabilization, day treatment, and services to prevent unnecessary and inappropriate treatment and hospitalization and the deprivation of a person's liberty as part of the required continuum of care for persons needing addiction services, persons with serious mental illness, or children with serious emotional disorders. Effective 30 days after filing with the secretary of state.

440 IAC 9-2-4
440 IAC 9-2-5
440 IAC 9-2-6

SECTION 1. 440 IAC 9-2, AS ADDED AT 24 IR 372, SECTION 2, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

440 IAC 9-2-4 Acute stabilization
Authority: IC 12-21-2-8; IC 12-21-5-1.5
Affected: IC 12-7-2; IC 12-24-12-10; IC 12-24-19-4

Sec. 4. (a) Managed care providers and community mental health centers shall provide acute stabilization according to the standards set out in this section. Managed care providers and community mental health centers shall ensure that their subcontractors who provide acute stabilization services also meet the same standards.

(b) Acute stabilization can take place in a variety of settings, as appropriate. Acute stabilization services are those activities which accomplish rapid intervention and management of psychological and social distress of persons in crisis. A person in crisis is a person whose condition is threatening to their physical well being or that of others.

(c) Inpatient care in a licensed general or private mental health institution is a necessary part of acute stabilization for all populations.

(1) All managed care providers and community mental health centers shall either operate or contract with a licensed general or psychiatric hospital to provide inpatient care.

(2) The staff of the managed care provider or community mental health center shall be involved in the planning of treatment for and the discharge of the consumer during the time the consumer is in inpatient care, to maintain continuity of care.

(3) The managed care provider or community mental health center shall assure that the consumer is able to obtain psychiatric inpatient care without regard to the ability to pay.

(d) All managed care providers for addictions treatment services and all community mental health centers shall have detoxification services available for individuals who are chronically addicted.

(1) Detoxification services are those activities provided for a person during withdrawal from alcohol and other drugs, under the supervision of a physician or clinical nurse specialist.

(2) All managed care providers for addictions treatment services and all community mental health centers shall either operate or contract with a provider of detoxification services.

(3) Detoxification services shall be included within the array of services and shall be available twenty-four (24) hours per day, seven (7) days per week.

(4) The staff of the managed care provider or community mental health center shall be involved in the treatment of the consumer during the time the consumer is in detoxification services to maintain continuity of care.

(e) All managed care providers and community mental health centers shall have a physician licensed in Indiana available for consultation to staff twenty-four (24) hours per day, seven (7) days per week.

(f) In addition to inpatient or detoxification, all managed care providers and all community mental health centers shall have the ability to provide crisis services in other appropriate settings.

(1) Crisis services must be protective and supportive, while being in as natural an environment as possible.

(2) When a consumer is in crisis, staff must be on site.

(Division of Mental Health; 440 IAC 9-2-4)

SECTION 2. 440 IAC 9-2, AS ADDED AT 24 IR 372, SECTION 2, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

440 IAC 9-2-5 Day treatment for adults
Authority: IC 12-21-2-8; IC 12-21-5-1.5
Affected: IC 12-7-2; IC 12-24-12-10; IC 12-24-19-4

Sec. 5. (a) Managed care providers and community mental health centers shall provide or arrange for the provision of day treatment according to the standards set out in this section. Managed care providers and community mental health centers shall ensure that their subcontractors who provide day treatment services also meet the same standards.

(b) Day treatment services provide a distinct and organized treatment program that offers less than twenty-four (24) hour daily care and furnishes a well defined, structured program of activities during the day, evening, or weekend for a specific consumer population, seriously mentally ill adults, and individuals who abuse substances.

(c) Day treatment shall be provided to individual consumers, as appropriate, according to the individual treatment plan, which is required to be developed for each consumer at section 3 of this rule:

(1) Clinical records shall reflect individualized schedules for participants.

(2) Schedules shall be individualized based upon a written care plan, based on an individualized assessment of needs.

(d) A day treatment program shall be based on a written, cohesive, and clearly stated philosophy and treatment orientation and must include the following items:

(1) For each population served, there must be a written statement of philosophy that is based on literature, research, and proven practice models for that population.

(2) The services must be consumer centered.

(3) The philosophy shall explicitly state a consideration of client preferences and informed choices.

(4) The stated philosophy shall be carried out in practice.

(e) The managed care provider or community mental health center shall provide, as a part of a day treatment program, or in other parts of the continuum, the following program units as a minimum:

(1) Treatment groups.

(2) Vocational services, which include a range of activities designed to assist an individual to realize the individual's fullest vocational potential by utilizing such activities as supported employment, vocational rehabilitation, job skills training, volunteer work, or clubhouse.

(3) Training for the consumer in self-management, including psycho-education and training in disease management.

(4) Training in activities of daily living.

(5) Community interaction programs.

(f) Day treatment programs shall provide programming at distinguishable levels of intensity. Intensity is a measure of the structure, pace of activity, and supervision or clinical intervention in a program.

(g) A day treatment program shall have the following as evidence of ongoing programming:

(1) Schedules of ongoing programming.

(2) Evidence of normal activities outside the facility in community settings.

(3) Service records or other evidence that individuals receive services of different intensity, according to their individual treatment plan.

(Division of Mental Health; 440 IAC 9-2-5)

SECTION 3. 440 IAC 9-2, AS ADDED AT 24 IR 372, SECTION 2, IS AMENDED BY ADDING A NEW SECTION TO READ AS FOLLOWS:

440 IAC 9-2-6 Services to prevent unnecessary and inappropriate treatment and hospitalization and the deprivation of a person's liberty

Authority: IC 12-21-2-8; IC 12-21-5-1.5
Affected: IC 12-7-2; IC 12-24-12-10; IC 12-24-19-4; IC 12-26

Sec. 6. (a) Services to prevent unnecessary and inappropriate deprivation of a person's liberty include the following:

(1) Review of commitments and gatekeeping into and out of state-operated institutions.

(2) The range of community support program services and crisis service alternatives.

(3) Those administrative and supervisory functions that manage the care provided to make certain that each consumer receives appropriate care.

(b) A utilization management plan, which provides objective guidance that helps direct treatment, external to the clinician/consumer relationship, must be in place and include the following:

(1) The plan shall be an existing system that defines criteria for initiating a course of treatment, transition, and discharge.

(2) The plan shall be objective, documented, and external to individual clinicians.

(3) The plan shall cite published literature and research on which the system is based.

(4) Utilization management may consist of any of the following:

(A) Prior authorization manuals or systems.

(B) Evidence based treatment systems.

(C) Clinical pathways.

(D) American Society of Addiction Medicine criteria.

(E) Another system of linking need to care.

(5) A provider may contract for utilization management services.

(c) In addition to regular peer review, supervisor review, and treatment plan reviews, the provider shall have an ongoing process to evaluate the utilization of services.

(d) The utilization of services review shall include the following:

(1) The percentage of cases evaluated for each modality of treatment.

(2) The ongoing system of treatment evaluation.

(3) Samples of reports from the previous year's treatment review.

(e) The provider shall train staff on the use of the utilization management system and keep records regarding the training. *(Division of Mental Health; 440 IAC 9-2-6)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 23, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana the Division of Mental Health will hold a public hearing on proposed new rules to establish standards and requirements for community mental health centers and certified managed care providers regarding acute stabilization, day treatment, and services to prevent unnecessary and inappropriate treatment and hospitalization and the deprivation of a person's liberty as part of the required continuum of care for persons needing addiction services, persons with serious mental illness, or children with serious emotional disorders. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet Corson
Director
Division of Mental Health

TITLE 460 DIVISION OF DISABILITY, AGING, AND REHABILITATIVE SERVICES

Proposed Rule
LSA Document #00-286

DIGEST

Adds 460 IAC 1-3.6 concerning the residential care assistance program eligibility requirements. Effective 30 days after filing with the secretary of state.

460 IAC 1-3.6

SECTION 1. 460 IAC 1-3.6 IS ADDED TO READ AS FOLLOWS:

Rule 3.6. Residential Care Assistance Program

460 IAC 1-3.6-1 Definitions
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-10-6; IC 12-30; IC 16-28

Sec. 1. (a) The definitions in this section apply throughout this rule.

(b) "County home" means a residential facility owned, staffed, maintained, and operated by a county government that provides residential care to individuals.

(c) "County office" means the county office of family and children.

(d) "Division" means the division of disability, aging, and rehabilitative services.

(e) "Residential care" provided in a county home is nonmedical assistance provided to a resident. Residential care provided in a residential home is room, board, and laundry, along with minimal administrative direction.

(f) "Residential care assistance" means state financial assistance through the division paid on behalf of a resident of a county home or residential home who has been found to be eligible for assistance.

(g) "Residential home" means a residential care setting licensed under IC 16-28 or an accredited Christian Science facility listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc. that meets certain life safety standards considered necessary by the state fire marshal. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-1)*

460 IAC 1-3.6-2 Eligibility for assistance for county home residents
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-10-6; IC 12-30

Sec. 2. (a) An individual is eligible for residential care assistance in a county home if the individual:
(1) is at least sixty-five (65) years of age, blind, or disabled;
(2) is a resident of a county home; and
(3) would be eligible for federal Supplemental Security Income assistance except for the fact that the individual is residing in a county home.

(b) An individual will be determined to be eligible for federal Supplemental Security Income assistance if the individual does any of the following:
(1) Presents verification that the individual is currently receiving federal Supplemental Security Income benefits.
(2) Presents verification that the individual is currently receiving Medicaid benefits.
(3) It is determined by the county office that the individual is eligible for federal Supplemental Security Income benefits. An individual shall be determined to be eligible for federal Supplemental Security Income benefits if the individual:
(A) has a disability that meets the definition of disability contained in 42 U.S.C. 1382c(a)(3)(A) and 42. U.S.C. 1382c(a)(3)(B); and
(B) is financially eligible for federal Supplemental Security Income benefits.

(c) An individual who is disabled because of mental illness may be admitted to a county home only to the extent that money is available for the individual's care. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-2)*

460 IAC 1-3.6-3 Eligibility for assistance in a residential home
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-10-6

Sec. 3. (a) An individual is eligible for residential care assistance in a residential home if the individual:
(1) is a current recipient of Medicaid or federal Supplemental Security Income benefits; and
(2) can be adequately cared for in a residential care setting.

(b) An individual will be determined to be able to be adequately cared for in a residential home if an individual is admitted to or cared for in a residential home.

(c) An individual diagnosed with mental retardation may not be admitted to a residential home.

(d) An individual who is disabled because of mental illness may be admitted to a residential home only to the extent that money is available for the individual's care. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-3)*

460 IAC 1-3.6-4 Continuing financial eligibility
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-10-6; IC 12-30

Sec. 4. An individual who is receiving residential care assistance and has an increase in income that would render the individual ineligible for residential care assistance may elect to continue to be eligible for residential care assistance by paying the excess income to the county home or residential home that provides residential care to the individual. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-4)*

460 IAC 1-3.6-5 Annual review
Authority: IC 12-8-8-4; IC 12-9-2-3; IC 12-10-6
Affected: IC 12-10-6; IC 12-30

Sec. 5. Eligibility for residential care assistance shall be redetermined by the county office on an annual basis, upon a change in the eligible individual's status as a recipient of Medicaid or federal Supplemental Security Income benefits, or upon a change in the medical status of a resident of a county home that would render the resident ineligible for federal Supplemental Security Income benefits. *(Division of Disability, Aging, and Rehabilitative Services; 460 IAC 1-3.6-5)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 27, 2001 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Room W451 Conference Room A, Indianapolis, Indiana the Division of Disability, Aging, and Rehabilitative Services will hold a public hearing on a proposed new rule concerning residential care assistance program eligibility requirements.

If an accommodation is required to allow an individual with a disability to participate in this meeting, please contact Kevin Wild at (317) 233-2582 at least 48 hours prior to the meeting.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W451 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Karen Davis
General Counsel
Division of Disability, Aging, and Rehabilitative Services

TITLE 470 DIVISION OF FAMILY AND CHILDREN

Proposed Rule
LSA Document #01-173

DIGEST

Amends 470 IAC 10.1-1-2 to update the support services which will be reimbursed and the amount of reimbursement for those services to more accurately reflect current needs and costs. Supportive services are provided when necessary for an individual's participation in an employment or training activity pursuant to the IMPACT portion of the AFDC program. Effective 30 days after filing with secretary of state.

470 IAC 10.1-1-2

SECTION 1. 470 IAC 10.1-1-2 IS AMENDED TO READ AS FOLLOWS:

470 IAC 10.1-1-2 Applicant and recipient responsibilities
Authority: IC 12-13-2-3; IC 12-13-5-3; IC 12-13-7-5
Affected: IC 12-14

Sec. 2. (a) In addition to the requirements of 470 IAC 2.1-1-2, the requirements of this rule apply to the AFDC and AFDC-UP programs.

(b) The IMPACT program incorporates the employment and training program provisions at 45 CFR 250 (Job Opportunities and Basic Skills Training Program), including the following:
(1) Employment services, including the following:
(A) Job search.
(B) Job placement.
(C) Job development.
(D) On-the-job training.
(E) Community work experience.
(F) Other work program.
(2) Training activities, including the following:
(A) Job skills assessment.
(B) Adult basic education.
(C) High school completion.
(D) Vocational and other job skills training.
Training and education beyond high school is limited to twenty-four (24) months in duration. Educational placement is to emphasize vocational skills in a course of study which has the greatest degree of possibility for job placement immediately upon completion. Any educational placement must be consistent with the comprehensive assessment completed on the recipient.

(c) The IMPACT program shall be operational statewide.

(d) Except as provided in 45 CFR 250.30, all applicants for, and recipients of, AFDC and AFDC-UP must comply with the requirements of 45 CFR 250.30 and this section.

(e) Any individual exempt under 45 CFR 250.30 who is sixteen (16) years of age or older, and applying for or receiving AFDC or AFDC-UP in any of the ninety-two (92) counties may volunteer for the IMPACT program.

(f) All recipients of AFDC and AFDC-UP who are required to participate in the IMPACT program, and those who volunteer for the IMPACT program, will be referred to IMPACT. IMPACT participants will be considered for placement in an appropriate employment or training activity with an emphasis on immediate job placement, which may be complemented by

education or training, consistent with the comprehensive assessment of the recipient.

(g) The following actions constitute failure to cooperate with any of the AFDC and AFDC-UP provisions administered through IMPACT:

(1) Failure to attend an assessment interview.

(2) Failure to go to a job interview.

(3) Voluntary termination of employment without prior approval of the caseworker.

(4) Refusal to accept employment.

(5) Voluntary reduction of employment hours without the prior approval of the caseworker.

(6) Refusal to cooperate with any employment or training agency whose services are included on an individual's employability plan.

(7) Failure to attend seventy-five percent (75%) of the scheduled hours for any activity.

(8) Termination of employment by the employer, because of disciplinary reasons, for example, firing for good cause.

(h) An individual's failure to cooperate or accept employment will result in a sanction that reduces the AFDC benefit for periods of time prescribed in 45 CFR 250.34. For the first failure, the sanction will continue until the failure to comply ceases or employment is accepted. For the second failure, the sanction will continue until the failure to comply ceases or three (3) months, whichever is longer. For any subsequent failure, the sanction will continue until the failure to comply ceases or six (6) months, whichever is longer. An individual's failure to cooperate is considered to have ceased when the participant accepts employment of at least thirty (30) hours at minimum wage or agrees to participate in the program by completing the assigned activity or attending the assigned activity for two (2) weeks, whichever is less.

(i) An individual may be temporarily excused from activities with good cause. Good cause for failure to cooperate with any of the AFDC and AFDC-UP provisions administered through IMPACT shall be limited to the following reasons:

(1) The individual is the parent or other caretaker relative personally providing care for a child under six (6) years of age, and the employment or training activity would require such individual to work more than twenty (20) hours per week.

(2) Child or incapacitated adult care is necessary for an individual to participate in an employment or training activity, and such care is not available and the division is unable to provide the care that is needed.

(3) The participant's employment would result in a net loss of income for the family as defined by 45 CFR 250.35.

(4) The individual is ill as verified by a licensed medical professional.

(5) Participation in an employment or training activity would interfere with the individual's unsubsidized employment of at least thirty (30) hours per week at minimum wage.

(6) The requirements of the employment or training placement are beyond the physical or mental capabilities of the individual as determined by a licensed medical professional.

(7) The conditions of the employment or training site violate applicable state or federal health and safety standards.

(8) Wages received by or offered to the individual do not meet applicable federal minimum wage requirements or, if greater than the federal minimum wage rate, are less than the customary wages paid for that activity in the community.

(9) The failure of the individual to participate occurred as a direct result of the individual's involvement in or remedy of a situation which presented an immediate risk to the health ~~or~~ **and** safety of the individual or others.

(10) Participation has been determined inappropriate by a judge or licensed health care professional.

(11) Work demands or conditions render continued employment unreasonable, such as working without being paid on schedule.

(j) Mandatory participants who fail to cooperate will be subject to the program penalties specified in 45 CFR 250.34.

(k) All IMPACT participants will be notified of their rights to a hearing when aggrieved by any action resulting from the IMPACT provisions in accordance with 45 CFR 205.10.

(l) Reimbursement is available to the extent indicated as follows for supportive services necessitated by the individual's participation in an employment or training activity:

Item or Services	Maximum Fee
Activity fees	~~$50~~ **$750** per twelve (12) month period
Clothing**/uniforms/shoes**	~~$100~~ **$600** per twelve (12) month period
~~Driver's Training~~	~~$260 maximum (one-time expense)~~
~~Driver's license fee~~	~~$10 per twelve (12) month period~~
~~Equipment and tools~~	~~$500 per twelve (12) month period~~
~~Health, beauty, and personal needs~~	~~$50 per twelve (12) month period~~
~~Licensure fees~~	~~$100 per twelve (12) month period~~
~~Medical (if not covered by Medicaid)~~	~~$500 per twelve (12) month period~~
~~Shoes~~	~~$100 per twelve (12) month period~~
Transportation	~~$200~~ **$300** per month maximum ($0.15 per mile if client has a vehicle, or the actual the cost of public transportation)
~~Uniforms~~	~~$100 per twelve (12) month period~~
~~Union dues~~	~~$150 for first quarter after obtaining employment~~
Vehicle ~~repair~~ **expense**	~~$500~~ **$1,500** per twelve (12) month period
~~Weight control~~	~~$300 per twelve (12) month period~~

~~Move to accept employment~~	~~$500 (one-time expense)~~
Employment related expenses	**$1,250 per twelve (12) month period**
Personal enhancement	**$500 per twelve (12) month period**

(m) Each applicant and recipient shall be interviewed by the county office at the time of the initial investigation and at each semiannual reinvestigation of eligibility. The initial interview may be conducted in the county office, at a home visit, or at a community location designated by the county office. The semiannual interview may be conducted by telephone. A face-to-face interview must be conducted by the county office with the recipient at least every twelve (12) months.

(n) Each applicant and recipient shall participate in any interview or reinvestigation required under subsection (m). Each recipient shall be required to allow the county office caseworker to visit him or her in his or her place of residence during agency working hours at the time of each reinvestigation of eligibility. In the absence of valid reason for the recipient's refusal or unwillingness to allow said visit or participate in said interview or ~~investigation,~~ **reinvestigation,** the entire assistance group shall be ineligible and the assistance group shall be discontinued. *(Division of Family and Children; 470 IAC 10.1-1-2; filed Mar 1, 1984, 2:31 p.m.: 7 IR 1022, eff Apr 1, 1984; filed Aug 28, 1984, 10:58 a.m.: 7 IR 2521; filed Mar 7, 1985, 2:54 p.m.: 8 IR 798; filed May 23, 1986, 10:40 a.m.: 9 IR 2712; filed Aug 26, 1987, 11:00 a.m.: 11 IR 87; filed Aug 5, 1988, 2:10 p.m.: 11 IR 4098; filed Apr 5, 1990, 1:20 p.m.: 13 IR 1395; filed May 2, 1990, 5:00 p.m.: 13 IR 1709; filed Oct 3, 1990, 1:44 p.m.: 14 IR 272, eff Oct 1, 1990 [IC 4-22-2-36 suspends the effectiveness of a rule document for thirty (30) days after filing with the secretary of state. LSA Document #90-72 was filed Oct 3, 1990.]; filed Feb 12, 1993, 5:00 p.m.: 16 IR 1808; filed Jun 19, 1996, 9:00 a.m.: 19 IR 3080)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 24, 2001 at 9:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Training Center Room 6, Indianapolis, Indiana the Division of Family and Children will hold a public hearing on proposed amendments to update the support services which will be reimbursed and the amount of reimbursement for those services to more accurately reflect current needs and costs. Supportive services are provided when necessary for an individual's participation in an employment or training activity pursuant to the IMPACT portion of the AFDC program. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W392 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

James Hmurovich
Director
Division of Family and Children

TITLE 470 DIVISION OF FAMILY AND CHILDREN

Proposed Rule
LSA Document #01-174

DIGEST

Adds 470 IAC 10.2 to establish and regulate the short term empowerment process (STEP), which will provide voucher assistance to families who are experiencing an employment crisis and who are not receiving temporary assistance to needy families (TANF). The purpose of STEP is to assist such families during a crisis in order to avoid the need for long term TANF assistance. 470 IAC 10.2 will define terms and funding, establish eligibility guidelines, and proscribe the requirements for administration of STEP by local offices of family and children. Effective 30 days after filing with the secretary of state.

470 IAC 10.2

SECTION 1. 470 IAC 10.2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 10.2. SHORT TERM EMPOWERMENT PROCESS

Rule 1. Definitions; Purpose; Applicability

470 IAC 10.2-1-1 Definitions
Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-7-2; IC 12-13-14-1

Sec. 1. (a) In addition to the definitions in IC 12-7-2 and IC 12-13-14-1, the definitions in this section apply throughout this article.

(b) "Dependent child" means a child under eighteen (18) years of age who meets the conditions of 45 CFR 233.90, as revised and effective on October 1, 1991 (not including tertiary Code of Federal Regulations citations resulting therefrom) or 45 CFR 233.100, as revised and effective on October 1, 1991 (not including tertiary Code of Federal Regulations citations resulting therefrom).

(c) "Division" means the division of family and children.

(d) "Indiana manpower placement and comprehensive training program (IMPACT)" means the employment and training program administered by the division.

(e) "Local office" refers to the local county office of the division.

(f) "STEP" refers to the short term empowerment process.

(g) "Temporary assistance to needy families (TANF)"

refers to the program established under Title IV-A of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in which states will:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; and

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and encourage the formation and maintenance of two (2) parent families.

(Division of Family and Children; 470 IAC 10.2-1-1)

470 IAC 10.2-1-2 Purpose and applicability

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13

Sec. 2. (a) STEP is designed to provide services to families that are in an employment crisis. An employment crisis is defined as the:

(1) client is in imminent danger of losing current employment unless a specific need or issue is met or resolved; or

(2) inability to accept a bona fide offer of new employment (as confirmed by the prospective employer);

unless a specific need or issue is met or resolved.

(b) It is not the intent of STEP to meet all of a family's needs. Community and agency collaboration must be enhanced to ensure that proper referrals are made in regard to issues such as domestic violence and child support, as well as children's needs not covered by the division, and any other issues that would be identified in the assessment process.

(c) STEP services are limited in the county by the available program funding. Once the funding level for the program is approved, the local office is expected to provide services within existing funding to all eligible families on a first come, first served basis. New applications can be approved until the funding appropriation is obligated. Once program funding is obligated, applications are to be denied.

(Division of Family and Children; 470 IAC 10.2-1-2)

Rule 2. Statewide Eligibility Requirements and Benefit Delivery

470 IAC 10.2-2-1 Eligibility requirements

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13

Sec. 1. (a) The applicant must have a dependent child under eighteen (18) years of age, as defined in 470 IAC 10.2-1-1(b), living with them.

(b) The family's gross income must be between one hundred percent (100%) and two hundred fifty percent (250%) of the federal poverty level dependent upon each local office service plan. Each local office may determine the percent of poverty level, within this range, to be used in that county. The local office will be consistent in the use of this level and consistent in the determination of income.

(c) Individuals receiving TANF benefits are not eligible for STEP as these individuals are eligible to receive supportive services well in excess of that offered by STEP in order to avert an employment crisis.

(d) There is a one thousand five hundred dollar ($1,500) maximum benefit provided per family per twelve (12) month period. This period starts when the first STEP benefit is approved.

(e) The determination of eligibility will be made and benefits will be paid within the thirty (30) day period from the date of application, but may address the needs of the family for a period of up to one hundred twenty (120) days.

(Division of Family and Children; 470 IAC 10.2-2-1)

470 IAC 10.2-2-2 Benefit delivery

Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13

Sec. 2. (a) Benefits are to be paid directly to vendors in the community who provide the goods and/or services to the applicant parent/caretaker. Under no circumstance is payment to be made directly to the parent/caretaker.

(b) The following services are available and may be paid through STEP:

(1) Auto repair.
(2) Transportation and transportation-related expenses.
(3) Clothing, uniforms, and shoes.
(4) Shelter and shelter-related expenses.
(5) Tools and equipment.
(6) Utility and telephone expenses.
(7) Books and manuals.
(8) Nonmedical health, hygiene, and personal needs.
(9) Union dues and professional license fees.

(c) The following services are not to be provided through STEP:

(1) Medical services.
(2) Project contingency fees.
(3) Political activities.
(4) Religious activities.
(5) Fines.
(6) Taxes.
(7) General government expenses.
(8) Child care.
(9) Construction or purchase of home or business improvements.

(10) Operation and maintenance expenses associated with public facilities or services.
(11) Purchase of automobiles.
(12) Other goods or services that cannot reasonably be expected to help the individual maintain or accept an offer of employment.
(Division of Family and Children; 470 IAC 10.2-2-2)

Rule 3. Local Office STEP Plan

470 IAC 10.2-3-1 Local office STEP plan
Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13

Sec. 1. (a) This written document, local office STEP plan, is to be completed by each of the ninety-two (92) local offices. This plan must address the following elements:
(1) Planning process.
(2) Eligibility requirements.
(3) Benefits/assessment tool, including a description of goods and services that will be available.
(4) Outreach, including a description of how potential users will be informed of the availability of program.
(5) Program notification, including a description of the notices used to inform applicants of eligibility and appeal rights.
(6) Interface with existing programs, which indicate how access to the food stamp program, hoosier healthwise, and child health insurance program will be encouraged, plus how plan interfaces with existing community services.

(b) The plan is to be submitted for approval by the division director at least forty-five (45) days prior to the proposed implementation date. Certification of the plan is conditioned upon receipt of the plan, which completely and comprehensively addresses the local office's STEP.

(c) This plan will serve to provide program and process descriptions for purposes of audit, appeals, and general public information. Therefore, amendments to the STEP plan should be submitted to the IMPACT program manager prior to implementation.

(d) The assessment tool, as developed by each local office, is submitted with the STEP plan and serves as the application for STEP services.

(e) The action plan, as developed by each local office, is submitted with the STEP plan and serves as the client notice.

(f) The local office case record should contain the assessment tool, action plan, and all other documentation/verifications surrounding the case, including verification of the employment and supportive services.

(g) Each local office is responsible for establishing verification requirements in order to reflect a clear and direct connection to the employment crisis and the services needed. *(Division of Family and Children; 470 IAC 10.2-3-1)*

Rule 4. Appeals

470 IAC 10.2-4-1 Appeals
Authority: IC 12-13-2-3; IC 12-13-5-3
Affected: IC 12-13

Sec. 1. Individuals may appeal any action regarding the delay or denial of benefits under this program. Individuals who wish to appeal may request a fair hearing. The hearing process for STEP is the same as for any other appeal under the division's rule concerning administrative appeal at 470 IAC 1-4. *(Division of Family and Children; 470 IAC 10.2-4-1)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 24, 2001 at 10:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 2, Indianapolis, Indiana the Division of Family and Children will hold a public hearing on proposed new rules to establish standards for the short term empowerment process.

Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W392 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

James Hmurovich
Director
Division of Family and Children

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #01-162

DIGEST

Amends 511 IAC 5-2-4 to provide ISTEP testing accommodations to students with limited English proficiency and to make other changes to conform with current statutory provisions. Effective 30 days after filing with the secretary of state.

511 IAC 5-2-4

SECTION 1. 511 IAC 5-2-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 5-2-4 Accommodations
Authority: IC 20-1-1-6; IC 20-10.1-16-10
Affected: IC 20-1-1.2; IC 20-1-1.3; IC 20-1-6; IC 20-10.1-16; IC 20-10.1-17

Sec. 4. (a) The case conference committee may determine that a ~~special adaptation~~ **testing accommodation** is necessary for a student, ~~identified as handicapped~~ **who is a student with a disability** under ~~511 IAC 7-1,~~ **511 IAC 7,** to take the test. The

~~adaptation~~ **accommodation** must be documented in the student's ~~IEP;~~ **individualized education program** as defined in ~~511 IAC 7-1-1(M),~~ **511 IAC 7,** the student's permanent educational record, and on the **appropriate** ISTEP ~~answer~~ document.

(b) ~~The building principal may determine for all other students that a special adaptation is necessary~~ For a student who ~~suffers~~ **has** an unusual condition that significantly impairs the student's ~~physical~~ ability to take the test, **but to whom subsection (a) does not apply, the building principal or principal's designee shall ensure that determinations about testing accommodations are made.** Examples of these conditions range from temporary disabling conditions, such as a broken arm, to chronic conditions that affect motor ability, such as cerebral palsy. The ~~adaptation should be noted~~ **accommodation must be documented** in the student's permanent educational record and on the **appropriate** ISTEP ~~answer~~ document.

(c) The building principal or principal's designee may determine that a testing accommodation is necessary for a student whose primary language is a language other than English and who is a student with limited English proficiency as defined in section 3 of this rule. The accommodation must be documented in the student's permanent educational record and on the appropriate ISTEP document.

~~(c) Special adaptations~~ **(d) Subject to the requirements of federal law, IC 20-1-6, and the ISTEP program manual, testing accommodations** include, but are not limited to:

(1) adaptive equipment;
(2) braille;
(3) increased testing time;
(4) large print; and
(5) a test assistant to fill in the answers indicated by the student on the answer document.

(Indiana State Board of Education; 511 IAC 5-2-4; filed May 4, 1988, 8:40 am: 11 IR 3038)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 6, 2001 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on proposed amendments to provide ISTEP testing accommodations to students with limited English proficiency and to make other changes to conform with current statutory provisions. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #01-163

DIGEST

Adds 511 IAC 6.2-6 to establish criteria and procedures for assessing school improvement, establishing categories or designations of school improvement, and placing schools in categories or designations of school improvement as required by IC 20-10.2-5. Effective 30 days after filing with the secretary of state.

511 IAC 6.2-6

SECTION 1. 511 IAC 6.2, AS ADDED AT 24 IR 3647, SECTION 1, IS AMENDED BY ADDING A NEW RULE TO READ AS FOLLOWS:

Rule 6. Assessing School Improvement and Performance

511 IAC 6.2-6-1 Primary indicators of improvement and performance; required administration of mandatory annual assessments

Authority: IC 20-10.2-7-1
Affected: IC 20-1-20.5-3; IC 20-1-1-6; IC 20-5-5; IC 20-5-62-6; IC 20-10.1-16; IC 20-10.1-17; IC 20-10.2-5

Sec. 1. (a) The primary indicators of school improvement and performance, as recommended by the education roundtable created by IC 20-1-20.5-3 and approved by the board, are the following:

(1) ISTEP English/language arts and mathematics tests at grades 3, 6, 8, and 10.
(2) English/language arts and mathematics tests at grades 4, 5, 7, and 9.
(3) ISTEP science tests and social studies tests, when implemented, at grades 5, 7, and 9.
(4) Science and social studies tests at grades 4, 6, and 8.

(b) The tests in subsection (a) collectively are referred to as mandatory annual assessments.

(c) Mandatory annual assessments shall be administered by the following schools:

(1) Public schools.
(2) Accredited nonpublic schools.
(3) Freeway schools under IC 20-5-62 unless a freeway school contract provides for a locally adopted assessment as permitted by IC 20-5-62-6(7).
(4) Charter schools under IC 20-5.5.

(d) If the board determines that adequate resources are not available to support administration of all mandatory annual assessments, the schools in subsection (c) are required to administer only the following:

(1) ISTEP English/language arts and mathematics tests at grades 3, 6, 8, and 10.

(2) ISTEP science tests and social studies tests, when implemented, at grades 5, 7, and 9.

(Indiana State Board of Education; 511 IAC 6.2-6-1)

511 IAC 6.2-6-2 Requirements for mandatory annual assessments; state provided tests; approval of locally adopted tests at certain grade levels

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.1-16-5; IC 20-10.1-17; IC 20-10.2-5

Sec. 2. (a) The mandatory annual assessments in section 1 of this rule must meet all of the following criteria:

(1) Be aligned with the Indiana academic standards.

(2) Test basic skills and applied skills as required by IC 20-10.1-16-5(b).

(3) Be graded on a common vertical scale.

(4) Meet security requirements listed in the ISTEP program manual.

(5) Provide, as appropriate, a method of testing and grading that will allow comparison with national and international academic standards, as required by IC 20-10.1-16-5(b)(3).

(b) The board and department shall develop and provide mandatory annual assessments.

(c) The schools in section 1(c) of this rule shall administer the following without substitution:

(1) ISTEP English/language arts and mathematics tests at grades 3, 6, 8, and 10.

(2) ISTEP science tests and social studies tests, when implemented, at grades 5, 7, and 9.

(d) The schools in section 1(c) of this rule may, with the approval of the board, substitute locally adopted tests for the following:

(1) English/language arts and mathematics tests at grades 4, 5, 7, and 9.

(2) Science and social studies tests at grades 4, 6, and 8.

(e) The board may approve a locally adopted test only if the test:

(1) meets the criteria in subsection (a)(1);

(2) has been reviewed for alignment with Indiana academic standards and recommended for approval, as being in alignment with the standards, by an entity experienced in determining alignment of tests with academic standards; and

(3) has been reviewed for alignment with psychometric properties of ISTEP and recommended for approval, as being in alignment with those psychometric properties, by an independent panel of individuals appointed by the department and experienced in examining psychometric properties of tests.

(f) Information to substantiate that the test meets the requirements of subsection (e) may be provided by the school or by the publisher of the test. *(Indiana State Board of Education; 511 IAC 6.2-6-2)*

511 IAC 6.2-6-3 School improvement and performance categories; placement of school in categories; measures used; nonmobile cohort group of students

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.2-5

Sec. 3. (a) Beginning in the 2003-2004 school year, the board annually shall place a school in a school improvement category and a school performance category based on results of mandatory annual assessments. English/language arts and mathematics test results will be used initially. Science and social studies test results will be added when those tests are implemented.

(b) School improvement category placement is based on increases in achievement of a nonmobile cohort group of students as they progress through school. Increases in achievement will be measured by:

(1) the percent of students who pass mandatory annual assessments in English/language arts and mathematics; or

(2) scale scores for mandatory annual assessments;

with category placement based on the greater of the increases if a school demonstrates an increase in both areas.

(c) The nonmobile cohort group of students referred to in subsection (a) includes students enrolled in the school for at least eighty percent (80%) of the school year preceding testing.

(d) School performance category placement is based on the percentage of all students who pass mandatory annual assessments both in English/language arts and mathematics. Science and social studies test results will be added when those tests are implemented. *(Indiana State Board of Education; 511 IAC 6.2-6-3)*

511 IAC 6.2-6-4 Categories of school improvement and performance

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.2-5

Sec. 4. (a) The following categories of school improvement are established:

Category	Criteria for Placement
1	Improvement of 7% or more
2	Improvement of at least 5% but less than 7%
3	Improvement of at least 3% but less than 5%
4	Improvement of less than 3%
5	No improvement

(b) The following categories of school performance are established:

Category	Criteria for Placement
1	90% or more passing
2	80–89.9% passing
3	70–79.9% passing
4	60–69.9% passing
5	fewer than 60% passing

(Indiana State Board of Education; 511 IAC 6.2-6-4)

511 IAC 6.2-6-5 Additional requirements for category placement

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.2-5

Sec. 5. (a) Notwithstanding the provisions of sections 3 and 4 of this rule, the following provisions apply to category placement:

(1) A school in performance category 1 is not placed in an improvement category.

(2) A school may be placed in category 1 or category 2 under section 4 of this rule only if the school participates in the comprehensive assessment system described in section 9 of this rule.

(3) A high school may be placed in category 1 or category 2 under section 4 of this rule only if the high school meets all of the following:

(A) Shows improvement in advanced placement test results as measured by the number of test results at the 3, 4, and 5 levels expressed as a percentage of the number of seniors.

(B) Shows improvement in the percentage of graduates who complete the Core 40 curriculum and earn the Academic Honors Diploma.

(C) Shows improvement in the number of passing scores on Core 40 end of course tests expressed as a percentage of the number of students.

(D) Meets a minimum graduation rate established by the board.

(4) A school may be placed in category 1 through category 4 under section 4 of this rule only if the percentage of school's students participating in mandatory annual assessments meets a minimum rate established by the board.

(5) A school that, for three (3) consecutive years, remains in:

(A) improvement category 4; and

(B) performance category 4 or performance category 5;

shall be placed in improvement category 5.

(b) After data become available, it is the intent of the board to establish minimum expectations for each of the factors in subsection (a)(3) for each category in section 4 of this rule. *(Indiana State Board of Education; 511 IAC 6.2-6-5)*

511 IAC 6.2-6-6 Support to schools

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.2-5; IC 20-10.2-6

Sec. 6. The board and department will provide attention and support to schools as follows:

(1) All schools may request technical assistance, with a preference given to the following:

(A) Schools with the lowest percentage of students demonstrating reading proficiency on the early assessments in kindergarten through grade 2.

(B) Schools in school performance category 5.

(2) Schools in school improvement category 5 will receive assistance as permitted and required by IC 20-10.2-6.

(Indiana State Board of Education; 511 IAC 6.2-6-6)

511 IAC 6.2-6-7 Disaggregated data and category placement

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.2-5

Sec. 7. After disaggregated data become available, it is the intent of the board to base category placement on improvement and performance of defined groups of students. *(Indiana State Board of Education; 511 IAC 6.2-6-7)*

511 IAC 6.2-6-8 Study of effects of mobility

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.2-5

Sec. 8. After data on the effects of interdistrict and intradistrict student mobility become available, it is the intent of the board to review and, if necessary, adjust the definition of nonmobile students in section 3(c) of this rule. *(Indiana State Board of Education; 511 IAC 6.2-6-8)*

511 IAC 6.2-6-9 Comprehensive assessment system; incentives for participation

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.1-16-15; IC 20-10.1.17; IC 20-10.2-4

Sec. 9. (a) The comprehensive assessment system includes the following:

(1) Mandatory annual assessments as described in section 1 of this rule.

(2) Core 40 end of course tests established pursuant to IC 20-10.1-16-15(b).

(3) Early assessments in kindergarten through grade 2, established pursuant to IC 20-10.1-16-15(c).

(b) The board and department will develop and make available to schools the assessments and tests described in subsection (a)(2) and (a)(3).

(c) Schools that participate in the comprehensive assessment system:

(1) are eligible for educational achievement grants,

including awards under IC 20-10.2-4 and P.L.291-2001, SECTION 4; and

(2) will receive a proportionally greater share of remediation funds, including grants under IC 20-10.1-17 and P.L.291-2001, SECTION 4.

(Indiana State Board of Education; 511 IAC 6.2-6-9)

511 IAC 6.2-6-10 Secondary indicators of improvement and performance

Authority: IC 20-10.2-7-1
Affected: IC 20-1-1-6; IC 20-10.2-5

Sec. 10. The benchmarks and indicators of performance in a school's annual performance report may be used:

(1) as secondary indicators affecting category placement under section 4 of this rule if data from mandatory annual assessments do not provide an accurate picture of school improvement and performance because of factors such as errors in the data or significant demographic changes in the student population;

(2) for public reporting; and

(3) to determine assistance provided to schools.

(Indiana State Board of Education; 511 IAC 6.2-6-10)

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 5, 2001 at 6:00 p.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis; ***AND*** *on September 6, 2001, at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on proposed new rules to establish criteria and procedures for assessing school improvement, establishing categories or designations of school improvement, and placing schools in categories or designations of school improvement as required by IC 20-10.2-5. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #01-203

DIGEST

Amends 511 IAC 5-2 to eliminate the norm-referenced test and test of cognitive skills from the Indiana statewide testing for educational progress (ISTEP) program but allow schools to continue to offer the tests at state expense. Effective 30 days after filing with the secretary of state.

511 IAC 5-2-1
511 IAC 5-2-3

SECTION 1. 511 IAC 5-2-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 5-2-1 Definitions

Authority: IC 20-1-1-6; IC 20-10.1-16-5; IC 20-10.1-16-10
Affected: IC 20-1-1.2; IC 20-1-1.3; IC 20-10.1-17

Sec. 1. **(a)** "ISTEP" refers to the Indiana statewide testing for educational progress test consisting of the following components:

(1) A criterion-referenced test in English/language arts and mathematics for grades 3, 6, 8, and 10.

~~(1)~~ **(2)** A standardized, norm-referenced test in the subject areas of English/language arts and mathematics for grades ~~1,~~ ~~2,~~ 3, 6, 8, ~~9,~~ and ~~11,~~ ~~supplemented with test items needed to better relate the ISTEP program with the proficiency statements developed by the department.~~ **10. Beginning with the 2000-2001 school year, a school corporation or accredited nonpublic school may administer, but is not required to administer, the norm-referenced test in grade 10. Beginning with the 2001-2002 school year, a school corporation or accredited nonpublic school may administer, but is not required to administer, the norm-referenced test in grades 3, 6, and 8. If a school corporation or accredited nonpublic school administers the norm-referenced test, the state shall pay the cost of administering the norm-referenced test.**

~~(2)~~ **(3)** A cognitive abilities test for grades ~~2,~~ 3, 6, 8, ~~9,~~ and ~~11.~~ **10. Beginning with the 2000-2001 school year, a school corporation or accredited nonpublic school may administer, but is not required to administer, the cognitive abilities test. If a school corporation or accredited nonpublic school administers the cognitive abilities test, the state shall pay the cost of administering the cognitive abilities test.**

~~(3) Writing samples for grades 3, 6, 8, 9, and 11.~~

(4) Beginning in the ~~1988-89~~ **2002-2003** school year, ~~supplementary~~ tests in ~~the subject areas of~~ science. ~~and~~

(5) Beginning in the 2003-2004 school year, tests in social studies. ~~for grades 3, 6, 8, and 11.~~

~~"Proficiency statements" refer to the statements developed by the department of education identifying~~ **(b) "Academic standards" refers to** the skills and knowledge ~~taught in English/language arts and mathematics in grades 1, 2, 3, 6, 8, 9, and 11.~~ **base expected of a student at a particular grade level for a particular subject area.**

(c) "Student" means any individual enrolled in a school

corporation or ~~private~~ accredited **nonpublic** school. *(Indiana State Board of Education; 511 IAC 5-2-1; filed May 4, 1988, 8:40 a.m.: 11 IR 3037)*

SECTION 2. 511 IAC 5-2-3, AS AMENDED AT 24 IR 994, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

511 IAC 5-2-3 Applicability
Authority: IC 20-1-1-6; IC 20-10.1-16-5; IC 20-10.1-16-10
Affected: IC 20-1-1.2; IC 20-1-1.3; IC 20-10.1-17

Sec. 3. (a) Any ~~private~~ **nonpublic** school seeking accreditation and all school corporations shall administer the ISTEP **criterion-referenced** test to each student in grades 3, 6, 8, and 10. A student is exempt from participation in the ISTEP program if the student qualifies under one (1) of the following:

(1) As determined by the student's case conference committee, a student who is a student with a disability under 511 IAC 7, who does not receive classroom instruction in English/language arts or mathematics that reflects the student's grade level achievement standards.

(2) A student whose primary language is other than English, has limited proficiency in English, and reads at least two (2) years below grade level. Limited proficiency in English is evidenced by any of the following:

(A) The student does not understand, speak, read, or write English, but may know a few isolated words or expressions.

(B) The student understands simple sentences in English, especially when they are spoken slowly, but speaks only isolated words and expressions.

(C) The student:

(i) speaks English with hesitancy;

(ii) understands English with difficulty;

(iii) converses in English, but only with effort and assistance;

(iv) understands only some parts of lessons;

(v) cannot understand and follow simple directions; and

(vi) cannot write sentences that do not contain errors in syntax and fact.

(b) The building principal must document the exemption of a student from participation in the ISTEP program in the student's permanent educational record. If the student is exempt under subsection (a)(1), that exemption must be included in the student's IEP as defined under 511 IAC 7. *(Indiana State Board of Education; 511 IAC 5-2-3; filed May 4, 1988, 8:40 a.m.: 11 IR 3037)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 6, 2001 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on proposed amendments to eliminate the norm-referenced test and test of cognitive skills from the Indiana statewide testing for educational progress (ISTEP) program but allow schools to continue to offer the tests at state expense. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #01-212

DIGEST

Amends 511 IAC 6.1 concerning provisions for a transition from the performance-based accreditation system to the system of accountability for school performance and improvement created by IC 20-10.2. Effective 30 days after filing with the secretary of state.

511 IAC 6-2-1	**511 IAC 6.1-1-12**
511 IAC 6.1-0.5	**511 IAC 6.1-1-13**
511 IAC 6.1-1-1	**511 IAC 6.1-1-13.5**
511 IAC 6.1-1-2	**511 IAC 6.1-1-14**
511 IAC 6.1-1-3	**511 IAC 6.1-1-15**
511 IAC 6.1-1-4	**511 IAC 6.1-2-1**
511 IAC 6.1-1-5	**511 IAC 6.1-2-6**
511 IAC 6.1-1-6	**511 IAC 6.1-3-1**
511 IAC 6.1-1-7	**511 IAC 6.1-4-1**
511 IAC 6.1-1-8	**511 IAC 6.1-5-7**
511 IAC 6.1-1-9	**511 IAC 6.1-5-9**
511 IAC 6.1-1-11	**511 IAC 6.1-5-10**
511 IAC 6.1-1-11.5	**511 IAC 6.1-7**

SECTION 1. 511 IAC 6.1-0.5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 6.1. SCHOOL ACCREDITATION

Rule 0.5. Applicability

511 IAC 6.1-0.5-1 Applicability to schools
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-2

Sec. 1. This article applies only to the following:

(1) Public schools.

(2) Nonpublic schools that voluntarily become accredited.

(Indiana State Board of Education; 511 IAC 6.1-0.5-1)

SECTION 2. 511 IAC 6.1-1-1 IS AMENDED TO READ AS FOLLOWS:

Rule 1. School Accreditation System

511 IAC 6.1-1-1 School accreditation
Authority: IC 20-1-1-6; IC 20-1-1.2-18; IC 20-10.2-1-1
Affected: IC 20-1-1.2; IC 20-5-62; IC 20-5.5; IC 20-10.2-3; IC 20-10.2-5

Sec. 1. ~~In order to be accorded full accreditation status, schools in Indiana must:~~ **(a) A public school must be accredited. A nonpublic school may seek accreditation.**

(b) A school may be accredited by meeting the following criteria:

(1) Comply with ~~those~~ **the** legal standards ~~that insure the school has the necessary resources, personnel, programs, and safety standards in order to provide an educational program in a safe environment that is conducive to learning.~~ **in section 4 of this rule.**

(2) **Comply with the school improvement plan requirements of IC 20-10.2-3 by doing one (1) of the following:**

(A) Complete a **continuous and strategic** school improvement **and achievement** plan that ~~serves as a basis for assessment of school effectiveness, a structure for organizing evaluation efforts, and an impetus for mobilizing improvement efforts; and~~ **meets the requirements of IC 20-10.2-3 and 511 IAC 6.2-3.**

(B) Implement a quality-focused approach to strategic and continuous school improvement, such as the criteria for the Malcolm Baldrige National Quality Award for Education or the criteria for a national or regional accrediting agency approved by the state board.

(3) Meet ~~expected~~ performance ~~levels in the following areas:~~

~~(A) Student attendance rate.~~

~~(B) Graduation rate.~~

~~(C) ISTEP results.~~

~~(D) Reading and mathematics proficiencies.~~ **requirements under IC 20-10.2-5.**

(c) The board shall accredit a nonpublic school that:
(1) becomes a freeway school under IC 20-5-62; and
(2) complies with the terms of the freeway school contract.

(d) The board shall accredit a school that:
(1) becomes a charter school under IC 20-5.5; and
(2) complies with the requirements of IC 20-5.5.

(e) A school holding accreditation under the former performance-based accreditation system shall retain accreditation until the transition to the accreditation system described in this rule is complete. *(Indiana State Board of Education; 511 IAC 6.1-1-1; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1184)*

SECTION 3. 511 IAC 6.1-1-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-2 Definitions
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2; IC 20-6.1-8; IC 20-6.1-9; IC 20-10.1-16; IC 20-10.1-17

Sec. 2. (a) The definitions in this section apply throughout this article.

(b) "Academic standards" means the skills and knowledge base expected of students for a particular subject area at a particular grade level.

~~(b)~~ **(c)** "Accreditation year" means the year from July 1 to June 30.

~~(c)~~ **(d)** "Attendance center" means one (1) or more buildings where the school's program serves pupils who reside in an attendance area.

~~(d)~~ **(e)** "Credit" means a minimum of two hundred fifty (250) minutes of instruction per week for one (1) semester, except in the case of basic physical education courses where one (1) school year of instruction is required for one (1) credit.

~~(e)~~ **(f)** "Curriculum" means the planned interaction of pupils with instructional content, materials, resources, and processes for evaluating the attainment of educational objectives.

~~(f)~~ **(g)** "Department" means the Indiana department of education.

~~(g)~~ **(h)** "Dropout" means a student who was enrolled in school during the current school year or the previous summer recess, who left the educational system during the current school year or the previous summer recess, who has not graduated from high school, and who does not meet any of the following exclusionary conditions:

(1) Death.

(2) Temporary absence due to suspension or a school excused absence.

(3) Transfer to a public or nonpublic school.

~~(h)~~ **(i)** "Dropout rate" means the number determined under STEP THREE of the following formula:

STEP ONE: Determine the number of students enrolled on October 1 or the date closest to October 1 that school is in session.

STEP TWO: Determine the number of students who drop out of school during the current school year and the previous summer recess.

STEP THREE: Determine the quotient of:

(A) the amount determined under STEP TWO; divided by

(B) the amount determined under STEP ONE.

~~(i)~~ **(j)** "Fine arts education" means instruction in art, music, and other arts areas that encompass visual, aural, performing, and creative modes of student learning.

~~(j)~~ **(k)** "Graduation rate" means the number determined under STEP THREE of the following formula:

STEP ONE: Determine the dropout rates for grades 9, 10, 11, and 12.

STEP TWO: Determine the remainder of:

(A) 1.0; minus

(B) the amount determined under STEP ONE for each of the above four (4) grades.

STEP THREE: Determine the product of the four (4) amounts determined under STEP TWO.

~~(k)~~ **(l)** "ISTEP" means Indiana statewide testing for educational progress as established under IC 20-10.1-16, IC 20-10.1-17, **and** 511 IAC 5-2. ~~and 511 IAC 12-4.~~

~~(l)~~ **(m)** "Laboratory course" means a course in which a minimum of twenty-five percent (25%) of the total instructional time is devoted to laboratory activities. Laboratory activities are those activities in which the pupil personally utilizes appropriate procedures and equipment in accomplishing that learning task.

~~(m)~~ **(n)** "Legal standards" means those Indiana statutes and state board rules that apply to school accreditation.

~~(n)~~ **(o)** "Level", when used in course titles, means a course that lasts one (1) full school year in grades 9 through 12, except that in the highest level of a sequence a course of shorter duration may be offered.

~~(o)~~ **(p)** "Practical arts education" means instruction in the curriculum areas of:

(1) agricultural science and business;

(2) business technology education;

(3) family and consumer sciences; and

(4) technology education;

of a nonvocational or prevocational nature, which provides learning experiences in consumer knowledge, family living, creative expression, manual skills, technical skills, leisure time interests, and similar areas of practical application to everyday life.

~~(p)~~ **(q)** "Principal" means a properly certified person who is assigned as the chief administrative officer of a school.

~~(q) "Proficiencies" means the skills and knowledge base expected of students for a particular subject area at a particular grade level.~~

(r) "School classification" refers to the following school types:

(1) An elementary school, which includes:

(A) grade 1, 2, or 3;

(B) grade 1, 2, or 3 in combination with other grades; or

(C) any school that has grade 6 as its highest grade.

(2) A high school, which includes:

(A) grade 10, 11, or 12; or

(B) grade 10, 11, or 12 in combination with other grades.

(3) A middle school or junior high school, which includes any grade or combination of grades that is not defined as an elementary school or a high school.

If a school includes grades kindergarten through 12, the school superintendent shall designate the division of the grades within the school into at least two (2) school classifications.

(s) "School corporation" means any public school corporation established by, and under the laws of, the state of Indiana. The term includes, but is not necessarily limited to, any:

(1) school city;

(2) school town;

(3) school township;

(4) consolidated school corporation;

(5) county school corporation;

(6) metropolitan school ~~corporation;~~ **district;**

(7) township school corporation;

(8) united school corporation; **or**

(9) community school corporation.

~~(10) area vocational school; or~~

~~(11) special joint services school.~~

(t) "Semester" means half of a regular school year.

(u) "State board" means the Indiana state board of education.

(v) "Student attendance rate" means the aggregate number of days of attendance for the regular school year divided by the number of aggregate days of enrollment, as determined under 511 IAC 1-3-1(l).

(w) "Superintendent" means the chief administrative officer of a school corporation (generally referred to as the superintendent of schools, except, in the case of township schools, the term refers to the county superintendent of schools).

(x) "Teacher" means a properly certified, licensed person who is assigned to instruction. *(Indiana State Board of Education; 511 IAC 6.1-1-2; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1184; filed Jul 18, 1989, 5:00 p.m.: 12 IR 2259; filed Nov 8, 1990, 3:05 p.m.: 14 IR 652; filed Oct 6, 1997, 5:20 p.m.: 21 IR 389; filed May 28, 1998, 4:57 p.m.: 21 IR 3824)*

SECTION 4. 511 IAC 6.1-1-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-3 Accreditation levels

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-3

Sec. 3. **Subject to the provisions of section 13.5 of this rule,** the state board shall accord each ~~public~~ school ~~and school corporation~~ either full accreditation status, **provisional accreditation status,** or ~~probationary accreditation status.~~ **probation.**

(Indiana State Board of Education; 511 IAC 6.1-1-3; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1185)

SECTION 5. 511 IAC 6.1-1-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-4 Accreditation requirements

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-4; IC 20-1-1.2-8; IC 20-1-21-4; IC 20-10.1-16; IC 20-10.1-17; IC 20-10.2-3

Sec. 4. A school must meet the following accreditation requirements to be accorded full accreditation status:

(1) Compliance with the following legal standards:

(A) Health and safety requirements listed under 511 IAC 6.1-2.

(B) Minimum time requirements listed under 511 IAC 6.1-3.

(C) Staff-student ratio requirements listed under 511 IAC 6.1-4.

(D) Curriculum offering requirements listed under 511 IAC 6.1-5 and ~~511 IAC 6-5.1.~~ **511 IAC 6.1-5.1.**

(E) Instructional staff requirements listed under 511 IAC 6.1-6.

(F) ~~School improvement~~ **ISTEP participation** requirements ~~listed under 511 IAC 6.1-7.~~ **in accordance with IC 20-10.1-16, IC 20-10.1-17, and 511 IAC 5-2.**

(G) Mandatory annual assessment requirements in accordance with 511 IAC 6.2-6.

(H) Accurate and timely submission of all reports required of schools.

(I) Production of an annual performance report that meets the requirements of IC 20-1-21 and in the case of a:

(i) public school, is published in accordance with IC 20-1-21-4; or

(ii) nonpublic school, is disseminated to school constituents.

(J) Strategic and continuous school improvement and achievement planning requirements under IC 20-10.2-3 and 511 IAC 6.2-3.

(2) Performance at ~~its expected level in~~ **one (1) of** the following ~~areas:~~ **school improvement levels under 511 IAC 6.2-6-4:**

~~(A) Student attendance rate.~~

~~(B) Graduation rate.~~

~~(C) ISTEP results.~~

~~(D) Student proficiency in mathematics and reading.~~

(A) Performance at the category 1 level.

(B) Improvement at the category 3 level or higher.

(C) Improvement at the category 4 level or higher and performance at the category 2 level or category 3 level.

(Indiana State Board of Education; 511 IAC 6.1-1-4; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1185; filed Nov 8, 1990, 3:05 p.m.: 14 IR 654)

SECTION 6. 511 IAC 6.1-1-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-5 Accreditation procedures

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-5; IC 20-1-1.2-6; IC 20-6.1-8; IC 20-6.1-9; IC 20-10.1-16; IC 20-10.1-17

Sec. 5. ~~(a) On or before October 1 of the accreditation year, the department shall inform each school of its expected performance level in the following criteria:~~

~~(1) Student attendance rate.~~

~~(2) For high schools, graduation rate.~~

~~(3) ISTEP results.~~

~~(4) Mathematics proficiencies.~~

~~(5) Language arts proficiencies.~~

~~(b) A school's expected performance level in each of the criteria listed under subsection (a) is the amount determined under STEP EIGHT.~~

~~STEP ONE: Determine the school's cognitive skills index (CSI) by calculating the average ISTEP cognitive ability score of the school's students.~~

~~STEP TWO: Determine the school's socioeconomic status (SES) by calculating the percentage of students not receiving free lunches under the National School Lunch Act under 42 U.S.C. 1761.~~

~~STEP THREE: Using the canonical correlation method, weight the CSI as determined under STEP ONE and the SES as determined under STEP TWO according to their influence on the criteria listed under subsection (a).~~

~~STEP FOUR: Determine the school's contextual index by adding:~~

~~(1) the weighted CSI as determined under STEP THREE; and~~

~~(2) the weighted SES as determined under STEP THREE.~~

~~STEP FIVE: Determine each school's league by ranking all schools of the same classification according to their contextual indices. Each league shall include the twenty-five (25) schools with the next highest contextual indices above the school's contextual index and the twenty-five (25) schools with the next lowest contextual indices below the school's contextual index. (If the school's contextual index falls within the highest twenty-five (25) in the state, the league shall include all schools with contextual indices above the school's contextual index and the twenty-five (25) schools with the next lowest contextual indices. If the school's contextual index falls within the lowest twenty-five (25) in the state, the league shall include the twenty-five (25) schools with the next highest contextual indices and all schools with contextual indices lower than the school's contextual index.)~~

~~STEP SIX: Determine each league's average level of performance in each of the criteria listed under subsection (a).~~

~~STEP SEVEN: Determine each league's standard deviation in each of the criteria listed under subsection (a).~~

~~STEP EIGHT: Determine the level of performance in each of the criteria under subsection (a) that is one (1) standard deviation below the average performance as determined under STEP SIX.~~

~~(c) The department shall collect from each school the following information for that school:~~

~~(1) Student attendance rate.~~

~~(2) For high schools, graduation rate.~~

~~(3) ISTEP results.~~

~~(4) A report on language arts and mathematics proficiencies, including language arts and mathematics skills of students who are not required to undergo remediation under IC 20-10.1-17 and 511 IAC 12-4.~~

~~(5) Documentation of the implementation of professional development programs and evaluation plans for licensed school personnel.~~

~~(d) The department shall compare the information collected under subsection (c) with the school's expected performance levels in the criteria listed under subsection (a).~~

~~(c)~~ **(a) Each school and school corporation shall provide to** the department ~~shall collect from each school~~ **and other appropriate state agencies** documentation verifying ~~the school's~~ compliance with the legal standards listed in 511 IAC 6.1-2 through ~~511 IAC 6.1-7.~~ **511 IAC 6.1-6.**

~~(f)~~ **(b)** The department, **under procedures approved by the board,** shall review the documentation under subsection ~~(c)~~ **(a)** to determine if the school has met all legal standards.

(c) The school shall provide to the department a copy of its most recently revised strategic and continuous school improvement and achievement plan. The department shall determine if the plan meets one (1) of the following requirements:

(1) The plan was developed as a part of a quality focused school improvement process, such as the criteria for the Malcolm Baldrige National Quality Award for Education or for a national or regional accreditation agency, that is approved by the state board.

(2) The plan was:

(A) developed as a part of a school improvement process other than a process described in subdivision (1); and

(B) meets the requirements of 511 IAC 6.2-3.

(Indiana State Board of Education; 511 IAC 6.1-1-5; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1185; filed Jul 18, 1989, 5:00 p.m.: 12 IR 2260)

SECTION 7. 511 IAC 6.1-1-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-6 Accreditation status, school and school corporation

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-8

Sec. 6. (a) If the department determines that a school meets the accreditation requirements defined in section 4 of this rule, the state board shall **accord the school full accreditation status and** award the school a certificate of full accreditation status.

(b) The department shall review a fully accredited school no later than ~~five (5)~~ **three (3)** years after the state board's determination of its accreditation status.

(c) When schools enrolling at least ninety-five percent (95%) of the students within a school corporation achieve full accreditation status, the state board shall **accord the school corporation full accreditation status and** award the school corporation a certificate of full accreditation status. *(Indiana State Board of Education; 511 IAC 6.1-1-6; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1186)*

SECTION 8. 511 IAC 6.1-1-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-7 Appointment of on-site review panel

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-9

Sec. 7. **(a)** If a school does not meet the accreditation requirements defined in section 4 of this rule, the department shall ~~appoint a review panel to conduct an on-site evaluation of the school.~~ **conduct a preliminary visitation, at which time the school may provide additional information about either of the following:**

(1) Compliance with legal standards.

(2) School improvement and performance.

(b) If information provided at the preliminary visitation does not confirm that the school meets the accreditation requirements in section 4 of this rule, the department shall appoint a review panel to conduct an on-site evaluation of the school. *(Indiana State Board of Education; 511 IAC 6.1-1-7; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1186; filed Sep 11, 1997, 8:55 a.m.: 21 IR 394)*

SECTION 9. 511 IAC 6.1-1-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-8 Composition of the on-site review panel

Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-10

Sec. 8. The department shall select the review panel members from a pool of trained individuals. Each review panel shall consist of at least three (3) individuals, **including:**

(1) ~~one (1) staff member of the department;~~ **the chair of the panel, who:**

(A) has served as a member of an on-site review panel;

(B) has been trained to serve as chair of the panel; and

(C) may be a staff member of the department;

(2) one (1) classroom teacher; and

(3) one (1) individual who is not a classroom teacher. ~~but who represents the field of education.~~

(Indiana State Board of Education; 511 IAC 6.1-1-8; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1186)

SECTION 10. 511 IAC 6.1-1-9 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-9 Duties of the on-site review panel
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-11; IC 20-10.1-17

Sec. 9. (a) During its on-site evaluation of a school, the review panel shall review:

(1) teaching practices;

(2) administrative instructional leadership;

(3) parental and community involvement;

(4) implementation of the ISTEP remediation program under IC 20-10.1-17 and 511 IAC 12-4;

~~(5) implementation of the educational opportunity program for at-risk children under IC 20-10.1-18;~~

~~(6)~~ **(5)** the homework policy; ~~and~~

(6) curricular focus on academic standards and instructional practices that meet the needs of all students;

(7) school climate;

(8) monitoring student progress;

(9) corporation level and governing body support; and

~~(7)~~ **(10)** any other policy or practice necessary for the panel to determine ~~whether~~ **if** the school meets full accreditation status criteria.

(b) The review process must include the following strategies for gathering information about educational programming:

(1) reviewing documents;

(2) observing students in the learning environment; and

(3) interviewing teachers, administrators, parents, students, and community representatives.

~~(b)~~ **(c)** The review panel shall verify compliance with the legal standards set out in 511 IAC 6.1-2, 511 IAC 6.1-3, 511 IAC 6.1-4, 511 IAC 6.1-5, **and** 511 IAC 6.1-6. ~~and 511 IAC 6.1-7.~~ *(Indiana State Board of Education; 511 IAC 6.1-1-9; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1186)*

SECTION 11. 511 IAC 6.1-1-11 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-11 Determination by the state board
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-13

Sec. 11. (a) Upon receipt of the review panel's recommendation, **which must include analysis of strengths and weaknesses and justification for the recommendation,** the state board shall make one (1) of the following determinations as to the accreditation status of the school:

(1) Full accreditation status, with ~~the next~~ review ~~being~~ conducted ~~five~~ ~~(5)~~ **three (3)** years after the state board's determination of full accreditation, **if the school meets requirements for accreditation under section 4 of this rule.**

~~(2) Full accreditation status with the next review being conducted earlier than five (5) years after the state board's determination of full accreditation.~~

~~(3) Probationary accreditation status with the next review being conducted one (1) year after the state board's determination of probationary accreditation.~~

(2) Provisional accreditation status, with review conducted at least annually after the state board's determination of provisional accreditation, if both of the following are determined:

(A) The school meets the requirements for accreditation under section 4(1) of this rule.

(B) The school shows:

(i) improvement at the category 4 level; and

(ii) performance at the category 4 level or category 5 level;

under 511 IAC 6.2-6-4.

(3) Provisional accreditation status, with review conducted at least annually after the state board's determination of provisional accreditation status, if both of the following are determined:

(A) The school meets the requirements for accreditation under section 4(1) of this rule.

(B) The school is in the first or second year after initial placement at the category 5 level of school improvement under 511 IAC 6.2-6-4.

(4) Probation, with review conducted at least annually after the state board's determination of probationary status, if, in the third year or subsequent year after initial placement at the category 5 level of school improvement under 511 IAC 6.2-6-4, the school remains at the category 5 level of school improvement.

(b) The state board shall not accord full accreditation status to a school that does not comply with the legal standards described in ~~511 IAC 6.1-2, 511 IAC 6.1-3, 511 IAC 6.1-4, 511 IAC 6.1-5, 511 IAC 6.1-6, and 511 IAC 6.1-7.~~ **section 4(1) of this rule. If a school is accorded provisional accreditation status or probation for failure to comply with legal standards, the state board and department shall note that the status was accorded for a reason other than school performance**. *(Indiana State Board of Education; 511 IAC 6.1-1-11; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1186)*

SECTION 12. 511 IAC 6.1-1-11.5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-11.5 Review of fully accredited school
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2

Sec. 11.5. (a) The department shall appoint a review panel to conduct an evaluation of a school that has been awarded full accreditation status if the department verifies, prior to the school's next review date, that

~~(1)~~ the school is not in substantial compliance with the legal standards for accreditation under section 4(1) of this rule. ~~or (2) the school has, for two (2) consecutive years, failed to meet its expected performance levels under section 4(2) of this rule.~~

(b) Sections ~~8~~ **7** through 11 of this rule apply to an on-site evaluation under this section. *(Indiana State Board of Education; 511 IAC 6.1-1-11.5; filed Sep 11, 1997, 8:55 a.m.: 21 IR 395)*

SECTION 13. 511 IAC 6.1-1-13 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-13 Action by the state board
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-15

Sec. 13. The state board shall accord ~~probationary accreditation status~~ **probation** to a school corporation with one (1) or more probationary schools that fail:

(1) to make progress; ~~in any of the three (3) years the school(s) is on probationary accreditation status;~~ or

(2) to achieve full accreditation status at the end of three (3) years.

(Indiana State Board of Education; 511 IAC 6.1-1-13; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1187)

SECTION 14. 511 IAC 6.1-1-13.5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-13.5 Action by state board on nonpublic school or charter school
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1-6; IC 20-5.5

Sec. 13.5. (a) The state board shall revoke the accreditation status of a nonpublic school ~~accorded probationary accreditation status that fails to:~~

~~(1) make progress in any of the three (3) years the school is on probationary status; or~~

~~(2) achieve full accreditation status at the end of three (3) years.~~

or a charter school under IC 20-5.5 if, in the fifth year after initial placement at the category 5 level of school improvement under 511 IAC 6.2-6-4, the school remains at the category 5 level of school improvement.

(b) If the accreditation status of a nonpublic school is revoked under subsection (a), the school may not seek accreditation until the school year in which the school normally would have been reviewed had the school been accorded full accreditation status rather than ~~probationary accreditation status.~~ **probation.** *(Indiana State Board of Education; 511 IAC 6.1-1-13.5; filed Sep 11, 1997, 8:55 a.m.: 21 IR 395)*

SECTION 15. 511 IAC 6.1-1-14 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-14 Recommendations to the general assembly
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-16

Sec. 14. If a school corporation accorded ~~probationary accreditation status~~ **probation** does not raise the level of accreditation of each of its schools that are on ~~probationary accreditation status~~ **probation** to full accreditation status within one (1) year, the department shall submit recommendations to the general assembly concerning the operation and administration of the school corporation and the schools within that school corporation. *(Indiana State Board of Education; 511 IAC 6.1-1-14; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1187)*

SECTION 16. 511 IAC 6.1-1-15 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-1-15 Right of appeal
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-7; IC 20-1-1.2-17

Sec. 15. ~~(a)~~ If a school ~~or school corporation~~ is accorded ~~probationary accreditation status~~ **probation** under section 11 ~~or 13~~ of this rule, the governing body ~~of the school corporation~~ may appeal that determination to the state board.

~~(b) If a school or school corporation is accorded probationary accreditation status, the department shall provide assistance to that school or school corporation to achieve full accreditation status.~~

~~(c) If a school is accorded probationary accreditation status, the completion of the school improvement plan under IC 20-1-1.2-7(a)(2)(G) and section 12 of this rule must involve parents, administrators, teachers, and other members of the community.~~ *(Indiana State Board of Education; 511 IAC 6.1-1-15; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1187)*

SECTION 17. 511 IAC 6.1-2-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-2-1 General requirements
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-1

Sec. 1. Each school shall comply with the rules of:

~~(1) the state board under 511 IAC 2;~~

~~(2)~~ **(1)** the fire prevention and building safety commission;

~~(3)~~ **(2)** the state ~~board~~ **department** of health; and

~~(4)~~ **(3)** the Indiana occupational safety and health administration.

(Indiana State Board of Education; 511 IAC 6.1-2-1; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1187)

SECTION 18. 511 IAC 6.1-2-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-2-6 Student services
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-1

Sec. 6. Each school shall provide ~~pupil personnel~~ **student** services under ~~511 IAC 4-1.~~ **511 IAC 4-1.5.** (*Indiana State Board of Education; 511 IAC 6.1-2-6; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1188*)

SECTION 19. 511 IAC 6.1-3-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-3-1 Student instructional day
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-1; IC 20-10.1-2-1

Sec. 1. (a) Each school corporation shall conduct at least one hundred eighty (180) student instructional days for all students grades 1 through 12.

(b) A student instructional day consists of a minimum of five (5) hours of instructional time in grades 1 through 6 and six (6) hours of instructional time in grades 7 through 12.

(c) Instead of conducting a full student instructional day, a school corporation may provide the equivalent amount of instructional time by conducting partial student instructional days.

(d) Instructional time is time in which students are participating in an approved course, curriculum or educationally related activity under the direction of a teacher. Instructional time includes a reasonable amount of passing time between classes within a single school building or on a single school campus. Instructional time does not include lunch or recess.

(e) An educationally related activity is a non-classroom activity, such as a field trip or convocation that meets all of the following:
(1) Is consistent with and promotes the educational philosophy and goals of the school corporation and the state board.
(2) Facilitates the attainment of specific educational objectives.
(3) Is a part of the goals and objectives of an approved course or curriculum.
(4) Represents a unique educational opportunity.
(5) Has been approved in writing by the local superintendent or the superintendent's designee.
(6) Cannot reasonably occur without interrupting the school day.
Each school corporation shall maintain a record of educationally related activities. The record is open to public inspection and must contain a description of the activity and a statement of the educational objectives of the activity.

(f) If a school corporation's calendar includes at least nine hundred ten (910) hours of instructional time for students in grades 1 through 6, the school corporation may dismiss students in grades 1 through 6 for no more than ten (10) hours during the school year for the purpose of conducting parent-teacher conferences. Students may not be dismissed for a full day for the purpose of conducting parent-teacher conferences.

(g) If a school corporation's calendar includes at least one thousand ninety-two (1,092) hours of instructional time for students in grades 7 through 12, the school corporation may dismiss students in grades 7 through 12 for no more than twelve (12) hours during the school year for the purpose of conducting teacher conferences with the parents of those students. Students may not be dismissed for a full day for the purpose of conducting parent-teacher conferences.

(h) If a school corporation has valid educational reasons, such as scheduling final examinations, for permitting students in grade 12 to attend school for fewer than one hundred eighty (180) days during the school year, the corporation may submit its proposed schedule for those students to the department of education for review and approval.

(i) This section applies to every accredited school as well as to every school corporation.

(j) **For accreditation purposes,** the department may grant a waiver of the ~~penalty imposed by IC 20-10.1-2-1(d)~~ **requirements of this section** for a particular number of student instructional days if:
(1) a school corporation applies to the department for a waiver ~~of the penalty imposed under IC 20-10.1-2-1(d)~~ for a specific number of cancelled student instructional days; and
(2) each of the particular number of instructional days requested to be waived was cancelled due to extraordinary circumstances.

(k) The department shall consider the following factors in determining if extraordinary circumstances justify granting a waiver under subsection (i):
(1) The reason(s) for not making up the cancelled instructional days.
(2) The length and amount of instructional time in the school calendar.
(3) The reason(s) the days were cancelled.
(4) The date the cancelled days occurred.
(5) The number of cancelled days.
(6) The number of schools affected.
~~(7) The existence of a current collective bargaining agreement which was in effect prior to the applicability of P.L. 390-1987 and which prohibits the school corporation from making up cancelled student instructional days.~~

(l) A decision of the department under this section may be appealed to the state board. (*Indiana State Board of Education; 511 IAC 6.1-3-1; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1188*)

SECTION 20. 511 IAC 6.1-4-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-4-1 Pupil/teacher ratio
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-1

Sec. 1. The average pupil/teacher ratio for a single school shall ~~be in accordance with 511 IAC 6-2-1(b)(2)~~ **not exceed 30/1. Pupil/teacher ratios shall be figured on a full time equivalency basis only on regular classroom teachers assigned to instruction.** *(Indiana State Board of Education; 511 IAC 6.1-4-1; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1190)*

SECTION 21. 511 IAC 6.1-5-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 6.1-5-7 Special education
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-1; IC 20-1-6

Sec. 7. Each school corporation shall provide special education to ~~handicapped~~ students **with disabilities** in accordance with ~~511 IAC 7-1-1.~~ **511 IAC 7.** *(Indiana State Board of Education; 511 IAC 6.1-5-7; filed Jan 9, 1989, 11:00 a.m.: 12 IR 1192)*

SECTION 22. 511 IAC 6.1-5-9 IS ADDED TO READ AS FOLLOWS:

511 IAC 6.1-5-9 Homework policy required
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-1

Sec. 9. Each school and school corporation shall adopt, implement, and communicate to teachers, parents, and students a written homework policy to reinforce the concept that homework is an out-of-school assignment that contributes to the educational process of the student. Homework shall be viewed as an extension of class work and related to the objectives of the curriculum. *(Indiana State Board of Education; 511 IAC 6.1-5-9)*

SECTION 23. 511 IAC 6.1-5-10 IS ADDED TO READ AS FOLLOWS:

511 IAC 6.1-5-10 Retaining student for athletic purposes prohibited
Authority: IC 20-1-1-6; IC 20-1-1.2-18
Affected: IC 20-1-1.2-1

Sec. 10. Each school and school corporation shall adopt and enforce a written policy that prohibits retaining a student in a grade level for the sole purpose of improving the student's ability to participate in extracurricular athletic programs. *(Indiana State Board of Education; 511 IAC 6.1-5-10)*

SECTION 24. THE FOLLOWING ARE REPEALED: 511 IAC 6-2-1; 511 IAC 6.1-1-12; 511 IAC 6.1-7.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 6, 2001 at 9:00 a.m., at the Department of Education, 151 West Ohio Street, James Whitcomb Riley Conference Room, Indianapolis, Indiana the Indiana State Board of Education will hold a public hearing on proposed new rules concerning provisions for a transition from the performance-based accreditation system to the system of accountability for school performance and improvement created by IC 20-10.2. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
Indiana State Board of Education

TITLE 575 STATE SCHOOL BUS COMMITTEE

Proposed Rule
LSA Document #01-213

DIGEST

Adds 575 IAC 1-1-4.5 regarding labeling requirements for school buses. Amends 575 IAC 1-1-5 to make the labeling requirements apply to buses ordered on or after the effective date. Effective July 1, 2002.

575 IAC 1-1-4.5
575 IAC 1-1-5

SECTION 1. 575 IAC 1-1-4.5 IS ADDED TO READ AS FOLLOWS:

575 IAC 1-1-4.5 Labeling requirements
Authority: IC 20-9.1-4-4; IC 20-9.1-4-4.5
Affected: IC 20-9.1

Sec. 4.5. (a) The school corporation identification number, as assigned by the department of education, must be placed on the rear emergency door between the upper and lower windows. The characters must be four (4) to six (6) inches high. On type D rear engine buses the identification number must appear in a corresponding location on the engine access cover.

(b) All letters and numbers must be black. *(State School Bus Committee; 575 IAC 1-1-4.5)*

SECTION 2. 575 IAC 1-1-5 IS AMENDED TO READ AS FOLLOWS:

575 IAC 1-1-5 Applicability of minimum specifications
Authority: IC 20-9.1-4-4
Affected: IC 20-9.1-5

Sec. 5. (a) The minimum specifications outlined in ~~575 IAC~~ **this title** apply to all school buses that are owned, operated, leased, or otherwise used by school corporations, private ~~school,~~ **schools,** or authorized agencies to transport children under IC 20-9.1.

(b) The revisions of February 26, 1981, apply to all school buses ~~which~~ **that** were ordered for purchase or placed in production for use in Indiana before June 30, 1988.

(c) The revisions of March 31, 1988, apply to all school buses ~~which~~ **that** were ordered for purchase and initially placed in service on or after July 1, 1988.

(d) Section 4.5 of this rule applies to all school buses ordered on or after July 1, 2002. *(State School Bus Committee; 575 IAC 1-1-5; filed Jun 20, 1988, 8:50 a.m.: 11 IR 3825)*

SECTION 3. SECTIONS 1 and 2 of this document take effect July 1, 2002.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 5, 2001 at 11:00 a.m., at the Indiana Department of Education, 151 West Ohio Street, Grissom Conference Room, Indianapolis, Indiana the State School Bus Committee will hold a public hearing on proposed new rules regarding labeling requirements for school buses, and amendments to make the labeling requirements apply to buses ordered on or after the effective date. Copies of these rules are now on file at 229 State House and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Suellen Reed
Superintendent of Public Instruction
State School Bus Committee

TITLE 844 MEDICAL LICENSING BOARD OF INDIANA

Proposed Rule
LSA Document #01-183

DIGEST

Adds 844 IAC 4-2-2 to establish fees for licensure as a medical doctor or osteopathic doctor. Repeals 844 IAC 4-2-1. Effective 30 days after filing with the secretary of state.

844 IAC 4-2-1
844 IAC 4-2-2

SECTION 1. 844 IAC 4-2-2 IS ADDED TO READ AS FOLLOWS:

844 IAC 4-2-2 Board fees
Authority: IC 25-1-8-2; IC 25-22.5-2-7
Affected: IC 25-22.5-1-1.1

Sec. 2. (a) Every qualified applicant for licensure to practice as a medical doctor or osteopathic doctor shall pay to the medical licensing board of Indiana the following fees:

Examination	**$250**
Endorsement-in	**$250**
Endorsement-out	**$10**
Renewal fee	**$200 per biennium**
Duplicate license	**$10**

(b) Every applicant for permits authorized by the medical licensing board of Indiana shall pay to the medical licensing board of Indiana the following fees:

Temporary medical permit, endorsement candidates, teaching permit, postgraduate training	**$100**
Renewal fee for a temporary medical permit	**$50**
Temporary medical permit (nonrenewable, limited scope)	**$100**

(Medical Licensing Board of Indiana; 844 IAC 4-2-2)

SECTION 2. 844 IAC 4-2-1 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on August 23, 2001 at 11:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Rooms 4 and 5, Indianapolis, Indiana the Medical Licensing Board of Indiana will hold a public hearing on proposed new rules to establish fees for applications. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Beth Anne Compton
Executive Director
Health Professions Bureau

TITLE 868 STATE PSYCHOLOGY BOARD

Proposed Rule
LSA Document #01-179

DIGEST

Amends 868 IAC 1.1-15-11 concerning continuing education requirements for license renewal. Effective 30 days after filing with the secretary of state.

868 IAC 1.1-15-11

SECTION 1. 868 IAC 1.1-15-11 IS AMENDED TO READ AS FOLLOWS:

868 IAC 1.1-15-11 License period; number of hours required

Authority: IC 25-33-1-3; IC 25-33-2-5
Affected: IC 25-33-2

Sec. 11. **(a)** During each two (2) year license period, a psychologist endorsed as a health service provider in psychology must complete at least forty (40) hours of continuing education of which at least twenty (20) hours must be in Category I courses. ~~and no more than twenty (20) hours may be in Category II courses.~~

(b) A psychologist may not earn more than twenty (20) Category II credit hours toward the requirements under this section.

(c) Effective for the license period beginning September 1, 2002, and every license period thereafter, a psychologist must earn at least six (6) hours of continuing education in ethics, a minimum of three (3) hours of which must be Category I courses. *(State Psychology Board; 868 IAC 1.1-15-11; filed May 10, 1994, 5:00 p.m.: 17 IR 2341; filed Apr 24, 2000, 12:13 p.m.: 23 IR 2243; readopted filed Apr 23, 2001, 11:30 a.m.: 24 IR 2896)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 21, 2001 at 9:30 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room 1, Indianapolis, Indiana the State Psychology Board will hold a public hearing on proposed amendments concerning continuing education. Copies of these rules are now on file at the Indiana Government Center-South, 402 West Washington Street, Room W041 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Beth Anne Compton
Executive Director
Health Professions Bureau

TITLE 925 MERIDIAN STREET PRESERVATION COMMISSION

Proposed Rule
LSA Document #01-70

DIGEST

Adds 925 IAC 2 to establish new rules governing the procedures of the Meridian Street Preservation Commission. Repeals 925 IAC 1. Effective 30 days after filing with the secretary of state.

925 IAC 1
925 IAC 2

SECTION 1. 925 IAC 2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 2. GENERAL PROVISIONS

Rule 1. Definitions

925 IAC 2-1-1 Definitions

Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2

Sec. 1. (a) The definitions in this rule apply throughout this article and are in addition to the definitions in IC 36-7-11.2.

(b) "Act" means IC 37-7-11.2.

(c) "Case" means any matter subject to a determination by the commission for which an application or petition has been properly filed.

(d) "Certificate" means a certificate of appropriateness issued by the commission.

(e) "Commission" means the Meridian Street preservation commission as established by IC 36-7-11.2.

(f) "Rezoning" means amending the zoning map to change the zoning district classification. *(Meridian Street Preservation Commission; 925 IAC 2-1-1)*

Rule 2. Public Hearings; Meetings

925 IAC 2-2-1 Time and location of public hearings and meetings

Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-31

Sec. 1. Regular meetings, designated as public hearings of the commission, shall be held at 4 p.m. on the third Tuesday of each month. If such regular meeting day falls on a legal holiday, the meeting shall be held on the following Tuesday. The commission shall determine the location of the following regular meeting at the immediately preceding regular meeting. *(Meridian Street Preservation Commission; 925 IAC 2-2-1)*

925 IAC 2-2-2 Notice of special meetings

Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-31

Sec. 2. Written notice of a special meeting is not required

if the time of the special meeting is fixed at a previous regular meeting. *(Meridian Street Preservation Commission; 925 IAC 2-2-2)*

925 IAC 2-2-3 Meetings and hearings open to public
Authority: IC 36-7-11.2-27
Affected: IC 5-14-1.5; IC 36-7-11.2-31

Sec. 3. All regular or special meetings and hearings of the commission are open to the public. *(Meridian Street Preservation Commission; 925 IAC 2-2-3)*

925 IAC 2-2-4 Vote by ballot; public access
Authority: IC 36-7-11.2-27
Affected: IC 5-14-3; IC 36-7-11.2

Sec. 4. (a) In all cases for certificates of appropriateness, variances, zoning ordinances, and zoning amendments, the commission's vote shall be by written ballot.

(b) The result of the vote shall be announced immediately after it is tallied and, in the case of a split decision, the names of commission members voting against an application or petition shall be announced.

(c) All ballots shall remain on file in the office of the commission and are public records. *(Meridian Street Preservation Commission; 925 IAC 2-2-4)*

925 IAC 2-2-5 Appearance; testimony of agent or attorney; written submissions
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-28; IC 36-7-11.2-34

Sec. 5. (a) At hearings before the commission, any party may appear in person, by representative, or by attorney.

(b) An attorney or other representative of any party, petitioner, or remonstrator may testify to facts within that person's own knowledge relating to the issues of the case. In such cases, all parties appearing before the commission shall be sworn and be subject to questions from the commission.

(c) Plans, photographs, letters, petitions, or other nonverbal information in support of or opposition to an application or petition may be submitted to the commission prior to the hearing by submitting such information to the chairman of the commission, who shall make all such information part of the public record. *(Meridian Street Preservation Commission; 925 IAC 2-2-5)*

925 IAC 2-2-6 Notice of continuances
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2

Sec. 6. No notice of continuance must be given to interested parties if a case is continued at a hearing for which proper notice was given. *(Meridian Street Preservation Commission; 925 IAC 2-2-6)*

925 IAC 2-2-7 Evidence; time allowed; order of presentation
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-34

Sec. 7. (a) Petitioners and remonstrators, respectively, shall each be permitted a total of ten (10) minutes, as described in subsections (b) and (c), for the presentation of evidence, statements, and argument at the public hearing of every case by the commission.

(b) Petitioners and persons appearing in support of a case shall first have a cumulative of ten (10) minutes for the presentation of evidence, statements, and argument in support of the matter being considered.

(c) Remonstrators and persons appearing in opposition to a case shall then have ten (10) minutes for the presentation of evidence, statements, and argument in opposition to the matter being considered.

(d) The petitioner shall then be permitted five (5) minutes for rebuttal and a closing statement. Rebuttal shall include only evidence, statements, or argument to rebut the opposing party's presentation.

(e) The commission members may ask questions of all parties and witnesses at any time during the presentation of evidence and after the close of evidence presented under subsections (b) through (d).

(f) The chairman shall, unless otherwise directed by a majority of the commission, have authority to extend the times specified in subsections (a) through (d). *(Meridian Street Preservation Commission; 925 IAC 2-2-7)*

925 IAC 2-2-8 Application fees
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-49

Sec. 8. (a) Fees to be paid by persons filing a petition with the commission for a certificate of appropriateness are set for the following classifications:

(1) Certificate of appropriateness for construction of a new building, one hundred dollars ($100).

(2) Certificate of appropriateness for demolition or removal of a building or a portion of a building, one hundred dollars ($100).

(3) Certificate of appropriateness for renovation or alteration or addition to an existing building, one hundred dollars ($100).

(4) Certificate of appropriateness for new swimming pools, driveways, walkways, patios, fences, removal of trees, or other site improvements that do not include buildings, fifty dollars ($50).

(b) Persons filing a petition with the commission for prior approval of a variance shall pay a fee of one hundred dollars ($100).

(c) Persons filing a petition with the commission for a recommendation to the city of Indianapolis metropolitan development commission regarding the amendment or adoption of a zoning ordinance shall pay a fee of one hundred dollars ($100).

(d) Fees are cumulative and shall be paid for each classification of request contained in a single petition. For example, the filing fees for a petition requesting:
(1) a variance of development standards;
(2) a certificate of appropriateness for removal of a building;
(3) a certificate of appropriateness for alteration to an existing building; and
(4) a certificate of appropriateness for a patio;
will be three hundred fifty dollars ($350).

(e) Fees shall be due at the time of filing. The commission shall consider a case only if the fee has been paid in full unless a majority of the commissioners present and voting at the meeting vote to reduce the fee for good cause shown. In no event shall the fee be reduced to less than fifty dollars ($50).

(f) The cost of any public notice shall be paid from the fees set forth in this section.

(g) If the commission has not otherwise set a fee under this rule for a type of application or petition, the fee shall be fifty dollars ($50). *(Meridian Street Preservation Commission; 925 IAC 2-2-8)*

925 IAC 2-2-9 Conduct of parties
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-26

Sec. 9. Every person appearing before the commission shall abide by the order and direction of the commission's chairman or presiding officer. *(Meridian Street Preservation Commission; 925 IAC 2-2-9)*

925 IAC 2-2-10 Testimony under oath or affirmation
Authority: IC 36-7-11.2-27
Affected: IC 33-16-4-1; IC 36-7-11.2-36

Sec. 10. All testimony before the commission shall be given under oath or affirmation, administered by a person authorized by the chairman or presiding officer and who has the authority to administer the oath or affirmation pursuant to IC 33-16-4-1. *(Meridian Street Preservation Commission; 925 IAC 2-2-10)*

Rule 3. Zoning Matters

925 IAC 2-3-1 Petition for a zoning variance, zoning ordinance adoption, or amendment
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2

Sec. 1. The petitioner for any zoning variance, zoning ordinance adoption, or amendment shall file with the chairman one (1) complete copy of the petition with all exhibits. *(Meridian Street Preservation Commission; 925 IAC 2-3-1)*

Rule 4. Certificate of Appropriateness

925 IAC 2-4-1 Certificate of appropriateness required; exceptions
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-61

Sec. 1. A certificate of appropriateness from the commission is required prior to the construction, reconstruction, alteration, or demolition of any structure or feature on any Meridian Street property, except that no certificate shall be required for the following:
(1) Normal repair and maintenance work consonant with proper upkeep of the property and which does not alter original materials, patterns, dimensions, location, style, size, and type.
(2) Interior decoration, interior remodeling, and interior renovation not involving a change in the use of the property.
(3) Removal of chain-link fences.
(4) Installation or removal (except for healthy trees) of plant materials, provided they were not required in a previously issued certificate of appropriateness.
(5) Installation of low borders on planting beds.
(6) Installation of ground lighting in back yards.
(7) Facade illumination that illuminates only the subject property.
(8) Security lights mounted on buildings or installed by Indianapolis Power and Light on existing utility poles at the rear of properties that are deflected light sources and not visible from the street.
(9) Incandescent wall or ceiling mounted light fixtures at the rear entrances of a building.
(10) Fixtures in the public right-of-way placed there by governmental agencies, such as mail collection boxes and traffic regulation devices.
(11) Temporary accessory items, including garden furniture, children's play equipment, small doghouses, outdoor sculpture, and fountains.
(12) Reroofing of any roof surface, provided that any new materials match those of the previous in composition, size, shape, color, and texture.

(13) Alteration of any flat roof when no change is visible from the ground.
(14) Repointing of mortar joints with mortar matching in composition, color, and texture to the original.
(15) Replacement of deteriorated wood siding or trim if less than five percent (5%) of any facade and if replacement wood matches the original exactly.
(16) Removal of siding made of aluminum, vinyl, particle board, asphalt, asbestos, plywood, hardboard, or synthetic masonry.
(17) Installation of interior storm windows and interior stained glass.
(18) Replacement of missing or broken glass with new glass to match the previous.
(19) Installation of visually unobtrusive exterior storm windows and doors provided no alterations are made to the opening and they are not attached to, or cover, any exterior trim.
(20) Repainting with appropriate colors for the architectural styles represented in the area.
(21) Window air conditioning units requiring no alteration to the window or opening and on a nonprimary facade.
(22) Air conditioning equipment and meter boxes on the rear of a house and not visible from the street.
(23) HVAC and utility equipment on roofs if not visible from the ground.
(24) Burial of electric, telephone, and television cable requiring no new utility poles.
(25) Aboveground installation of utility cables at the rear of the structure when underground service is not available.
(26) Exterior surface-mounted vents, such as those for dryers, heaters, bathrooms, and kitchens if no larger than one (1) square foot and not visible from the street.
(27) Replacement of any utility pole with one (1) of matching materials and of equal or lesser height and for the same use.

(Meridian Street Preservation Commission; 925 IAC 2-4-1)

925 IAC 2-4-2 Application for certificates of appropriateness

Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-34

Sec. 2. (a) The applicant for a certificate shall file with the chairman one (1) complete copy of the application with all exhibits.

(b) An application for a certificate shall contain the following:
(1) State the name and address of the petitioner, who may or may not be the owner of the subject property.
(2) State the name of the owner or owners and street address of the property that is the subject of the application.
(3) Describe, in detail, the following:
(A) The work to be done.
(B) The change resulting from such work, if any, in architectural features of the structure upon which such work is to be done.
(C) The nature and type of materials to be employed, specifying which such materials will be external and visible upon completion of the work.
(D) The name of the person who prepared plans.

(c) The application shall be accompanied by the following:
(1) A current photograph of the property taken from Meridian Street, if the work will be visible from Meridian Street.
(2) A photograph depicting the location of the work to be done and clearly showing all features to be altered or affected.
(3) A site plan indicating the accurate distance between the proposed construction and all property lines if new construction is proposed.
(4) If appropriate to the type of work being proposed, accurate drawings, with dimensions, showing the property or structure before and after the work for which the certificate is sought.
(5) Samples, pamphlets, or other information explaining the materials to be used.

(Meridian Street Preservation Commission; 925 IAC 2-4-2)

925 IAC 2-4-3 Notice of application for certificate of appropriateness

Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-7

Sec. 3. (a) Any person who files an application for a certificate shall, within ten (10) days after such filing, serve notice upon all interested parties defined in IC 36-7-11.2-7.

(b) Notice shall be personally served or mailed, first class postage prepaid, and include the following:
(1) The full name and address of the person filing the application.
(2) The street address of the property that is the subject of the application.
(3) A description of the type of work proposed to be performed.
(4) The date, time, and place of the meeting at which the application will be considered by the commission.

(Meridian Street Preservation Commission; 925 IAC 2-4-3)

925 IAC 2-4-4 Hearing on application; expedited consideration

Authority: IC 36-7-11.2-27
Affected: IC 14-3-3.2-17; IC 36-7-11.2-61

Sec. 4. (a) No certificate shall be approved or denied without a hearing.

(b) The commission may consider, but not conclusively rule on, an application for a certificate at a regular or special meeting for which proper notice of the application has not been given, provided reasonable notice to interested parties can be demonstrated and a majority of those present and voting at the meeting agree to consider the matter. *(Meridian Street Preservation Commission; 925 IAC 2-4-4)*

Rule 5. Dismissal; Withdrawal; Redocketing of Cases

925 IAC 2-5-1 Dismissal of cases
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-46

Sec. 1. (a) A majority vote of the commission members present and voting at the meeting may dismiss a case for want of prosecution or for lack of jurisdiction.

(b) Dismissal of a case does not prevent a person from reapplying at any time in the future.

(c) No fees paid to the commission for an application or petition will be refunded after dismissal, except by a majority vote of the members present and voting at a regular meeting. *(Meridian Street Preservation Commission; 925 IAC 2-5-1)*

925 IAC 2-5-2 Withdrawal of cases; redocketing
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-28

Sec. 2. (a) Any person who has filed a case may withdraw such case from commission consideration at any time before or during a hearing, but not after the chairman has called for a vote.

(b) Withdrawn cases may be docketed as a new case at any time, provided all filing and notice requirements are met.

(c) No fees paid to the commission for a case subsequently withdrawn will be refunded except by a majority vote of the members present and voting at a regular meeting. *(Meridian Street Preservation Commission; 925 IAC 2-5-2)*

925 IAC 2-5-3 Adverse decisions; redocketing
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-28

Sec. 3. (a) No case that has been decided adversely against an applicant or petitioner shall again be placed on the docket for consideration within a period of six (6) months from the date of the adverse decision.

(b) Upon motion to permit redocketing adopted by majority of those present and voting at the meeting, the commission may decide to consider such a case in less than six (6) months.

(c) In determining whether or not to consider a case that was previously decided adversely against an applicant or petitioner, the commission shall take into account evidence that the request is substantially different from the denied petition or application, especially with respect to those aspects of the request that caused the commission to deny it. *(Meridian Street Preservation Commission; 925 IAC 2-5-3)*

Rule 6. General Conduct of Business

925 IAC 2-6-1 Officers of commission; selection; presiding officer
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2-26

Sec. 1. (a) The commission may elect by majority vote of those present and voting a vice chairman from among its members at any regular or special meeting.

(b) The vice chairman shall preside at meetings in the event that the chairman is absent, is disabled, or has chosen to abstain from hearing and voting on a case or has otherwise disqualified himself or herself from hearing and voting on a case.

(c) The commission may elect by majority vote of those present and voting a secretary/treasurer from among its members at any regular or special meeting.

(d) The chairman shall preside at all meetings at which he or she is present unless he or she has chosen to disqualify himself or herself or has abstained from hearing and voting on a matter.

(e) In the event that neither the chairman nor the vice chairman is available to preside at a meeting, the chairman, or the vice chairman in the absence of the chairman, shall assign the duty of presiding officer to another member of the commission. *(Meridian Street Preservation Commission; 925 IAC 2-6-1)*

925 IAC 2-6-2 Points of order and procedure; chairman's authority
Authority: IC 36-7-11.2-27
Affected: IC 4-21.5; IC 36-7-11.2-26

Sec. 2. The chairman, subject to IC 36-7-11.2 and IC 4-21.5, shall decide all points of order or procedure unless otherwise directed by a majority of the commission present and voting at the meeting. *(Meridian Street Preservation Commission; 925 IAC 2-6-2)*

925 IAC 2-6-3 Prohibited contact regarding pending cases
Authority: IC 36-7-11.2-27
Affected: IC 36-7-11.2

Sec. 3. (a) No information pertaining to a pending case

shall be discussed by, with, or in the presence of any commission member, and no person shall contact any commission member, orally or in writing, in advance of a public hearing on a case in an effort to influence such member's votes, except as follows:

(1) Plans, photographs, letters, petitions, or other nonverbal information in support or opposition of an application or petition may be submitted to the commission prior to the hearing by submitting such information to the chairman of the commission, who shall make all such information part of the public record.

(2) The chairman, or his or her designee, may provide to commission members in advance of a public hearing copies of applications, plans, photographs, letters, petitions, planning facts, and other nonverbal documentation submitted in support or opposition of an application or petition, provided the information is part of the public record.

(3) Prior to the hearing, verbal communication between the chairman and applicants or petitioners shall be limited to procedural issues related to filing, documentation, notification, and hearing procedures.

(b) The applicant, petitioner, interested parties, or any attorney of record shall be informed of all letters, petitions, or other nonverbal communication received by the chairman or by any other member of the commission at the public hearing and shall be provided a copy if feasible. *(Meridian Street Preservation Commission; 925 IAC 2-6-3)*

925 IAC 2-6-4 Commissioner investigation

Authority: IC 36-7-11.2-27
Affected: IC 36-7-11-2-37

Sec. 4. (a) Before voting on a case, the petitioner or applicant, an interested party, or a commission member may request the case to be continued so that an investigative committee of commission members may have the opportunity to investigate the site and the facts of the case.

(b) If a majority of the commissioners present and voting at the meeting concur with the request, the commission may chose two (2) or three (3) commission members to serve on a committee to proceed with an investigation and report its findings to the commission at the hearing to which the case has been continued.

(c) There shall not be less than two (2) or more than three (3) members chosen for an investigative committee, and all members of the committee must be present during any visit to the site or fact investigation.

(d) While undertaking its investigation of the facts, the committee may:

(1) visit the site;

(2) talk to the petitioner or applicant and persons involved in developing the petitioner's plans in order to obtain a clear understanding of the submitted proposal and any alternative the petitioner wishes to propose; and

(3) talk with professionals about the facts of the case.

(e) While investigating, the committee shall not:

(1) make any determination;

(2) make any comments on the facts of the case or express any opinion on the investigation or recommendations that may be made to the commission; or

(3) commit any or all commission members to any opinion or action.

(f) Nothing contained in this rule shall be construed to prohibit an individual commissioner from doing a drive-by or walk-by site inspection provided that there is no communication with any interested party or petitioner. *(Meridian Street Preservation Commission; 925 IAC 2-6-4)*

SECTION 2. 925 IAC 1 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on September 6, 2001 at 4:00 p.m., at the Meridian Street Methodist Church library, 5500 North Meridian Street, Indianapolis, Indiana the Meridian Street Preservation Commission will hold a public hearing on proposed new rules governing the procedures of the commission. Copies of these rules are now on file at the Indianapolis Department of Metropolitan Development, 2042 City-County Building and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Tammara Tracy
Chairman
Meridian Street Preservation Commission